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109TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 109–373

# FEDERAL JUDGESHIP AND ADMINISTRATIVE EFFICIENCY ACT OF 2005

FEBRUARY 8 , 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

## R E P O R T

together with

## MINORITY VIEWS

[To accompany H.R. 4093]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4093) to provide for the appointment of additional Federal circuit and district judges, to improve the administration of justice, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Judgeship and Administrative Efficiency Act of 2005".

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

Sec. 101. Short title.
Sec. 102. Circuit judges for the circuit courts of appeals.
Sec. 103. District judges for the district courts.
Sec. 104. Establishment of article III court in the Virgin Islands.
Sec. 105. Effective date.

TITLE II—BANKRUPTCY JUDGESHIPS

Sec. 201. Short title.
Sec. 202. Authorization for additional bankruptcy judgeships.
Sec. 203. Temporary bankruptcy judgeships.
Sec. 204. Conversion of existing temporary bankruptcy judgeships.
Sec. 205. General provisions.
Sec. 206. Effective date.

TITLE III—NINTH CIRCUIT REORGANIZATION

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Number and composition of circuits.
Sec. 304. Number of circuit judges.
Sec. 305. Places of circuit court.
Sec. 306. Assignment of circuit judges.
Sec. 307. Election of assignment by senior judges.
Sec. 308. Seniority of judges.
Sec. 309. Application to cases.
Sec. 310. Temporary assignment of circuit judges among circuits.
Sec. 311. Temporary assignment of district judges among circuits.
Sec. 312. Administration.
Sec. 313. Effective date.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

# TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Federal Judgeship Act of 2005".

**SEC. 102. CIRCUIT JUDGES FOR THE CIRCUIT COURTS OF APPEALS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional circuit judge for the first circuit court of appeals;

(2) 2 additional circuit judges for the second circuit court of appeals;

(3) 1 additional circuit judge for the sixth circuit court of appeals; and

(4) 5 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional circuit judge for the eighth circuit court of appeals; and

(B) 2 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(2) VACANCIES.—

(A) EIGHTH CIRCUIT.—The first vacancy in the office of circuit judge in the eighth circuit court of appeals, occurring 10 years or more after the confirmation date of the judge named to fill the circuit judgeship created in that circuit by paragraph (1)(A) shall not be filled.

(B) NINTH CIRCUIT.—The first 2 vacancies in the office of circuit judge in the ninth circuit court of appeals, occurring 10 years or more after judges

are first confirmed to fill both temporary circuit judgeships created by paragraph (1)(B) shall not be filled.

(c) TABLE OF JUDGESHIPS.—In order that the table contained in section 44 of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized under subsection (a) of this section, such table is amended to read as follows:

| "Circuits | Number of Judges |
|---|---|
| District of Columbia | 12 |
| First | 7 |
| Second | 15 |
| Third | 14 |
| Fourth | 15 |
| Fifth | 17 |
| Sixth | 17 |
| Seventh | 11 |
| Eighth | 11 |
| Ninth | 33 |
| Tenth | 12 |
| Eleventh | 12 |
| Federal | 12.". |

**SEC. 103. DISTRICT JUDGES FOR THE DISTRICT COURTS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;
(2) 4 additional district judges for the district of Arizona;
(3) 3 additional district judges for the northern district of California;
(4) 4 additional district judges for the eastern district of California;
(5) 4 additional district judges for the central district of California;
(6) 1 additional district judge for the southern district of California;
(7) 1 additional district judge for the district of Colorado;
(8) 4 additional district judges for the middle district of Florida;
(9) 3 additional district judges for the southern district of Florida;
(10) 1 additional district judge for the district of Idaho;
(11) 1 additional district judge for the northern district of Illinois;
(12) 1 additional district judge for the southern district of Indiana;
(13) 1 additional district judge for the western district of Missouri;
(14) 1 additional district judge for the district of Nebraska;
(15) 1 additional district judge for the district of Nevada;
(16) 1 additional district judge for the district of New Mexico;
(17) 3 additional district judges for the eastern district of New York;
(18) 1 additional district judge for the western district of New York;
(19) 1 additional district judge for the district of Oregon;
(20) 1 additional district judge for the district of South Carolina;
(21) 3 additional district judges for the southern district of Texas;
(22) 2 additional district judges for the eastern district of Virginia; and
(23) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the middle district of Alabama;
(B) 1 additional district judge for the district of Arizona;
(C) 1 additional district judge for the northern district of California;
(D) 1 additional district judge for the district of Colorado;
(E) 1 additional district judge for the middle district of Florida;
(F) 1 additional district judge for the northern district of Iowa;
(G) 1 additional district judge for the district of Minnesota;
(H) 1 additional district judge for the district of New Jersey;
(I) 1 additional district judge for the district of New Mexico;
(J) 1 additional district judge for the southern district of Ohio;
(K) 1 additional district judge for the district of Oregon; and
(L) 1 additional district judge for the district of Utah.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the judicial districts named in paragraph (1) occurring 10 years or more after the confirmation date of the judge named to fill the district judgeship created in that district by paragraph (1) shall not be filled.

(c) EXISTING JUDGESHIPS.—

(1) PERMANENT JUDGESHIPS.—The existing judgeships for the district of Hawaii, the district of Kansas, and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those

offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2) EXTENSION OF TEMPORARY JUDGESHIP.—Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) is amended in the fifth sentence (relating to the northern district of Ohio) by striking "15 years" and inserting "20 years".

(d) TABLE OF JUDGESHIPS.—In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized under subsections (a) and (c) of this section, such table is amended to read as follows:

| **"Districts** | **Judges** |
|---|---|
| "Alabama: | |
| "Northern | 8 |
| "Middle | 3 |
| "Southern | 3 |
| "Alaska | 3 |
| "Arizona | 16 |
| "Arkansas: | |
| "Eastern | 5 |
| "Western | 3 |
| "California: | |
| "Northern | 17 |
| "Eastern | 10 |
| "Central | 31 |
| "Southern | 14 |
| "Colorado | 8 |
| "Connecticut | 8 |
| "Delaware | 4 |
| "District of Columbia | 15 |
| "Florida: | |
| "Northern | 4 |
| "Middle | 19 |
| "Southern | 20 |
| "Georgia: | |
| "Northern | 11 |
| "Middle | 4 |
| "Southern | 3 |
| "Hawaii | 4 |
| "Idaho | 3 |
| "Illinois: | |
| "Northern | 23 |
| "Central | 4 |
| "Southern | 4 |
| "Indiana: | |
| "Northern | 5 |
| "Southern | 6 |
| "Iowa: | |
| "Northern | 2 |
| "Southern | 3 |
| "Kansas | 6 |
| "Kentucky: | |
| "Eastern | 5 |
| "Western | 4 |
| "Eastern and Western | 1 |
| "Louisiana: | |
| "Eastern | 12 |
| "Middle | 3 |
| "Western | 7 |
| "Maine | 3 |
| "Maryland | 10 |
| "Massachusetts | 13 |
| "Michigan: | |
| "Eastern | 15 |
| "Western | 4 |
| "Minnesota | 7 |
| "Mississippi: | |
| "Northern | 3 |
| "Southern | 6 |
| "Missouri: | |
| "Eastern | 7 |
| "Western | 6 |
| "Eastern and Western | 2 |
| "Montana | 3 |
| "Nebraska | 4 |
| "Nevada | 8 |
| "New Hampshire | 3 |
| "New Jersey | 17 |
| "New Mexico | 7 |
| "New York: | |
| "Northern | 5 |
| "Southern | 28 |
| "Eastern | 18 |
| "Western | 5 |
| "North Carolina: | |
| "Eastern | 4 |
| "Middle | 4 |
| "Western | 4 |
| "North Dakota | 2 |

| | |
|---|---|
| "Ohio: | |
| "Northern | 11 |
| "Southern | 8 |
| "Oklahoma: | |
| "Northern | 3 |
| "Eastern | 1 |
| "Western | 6 |
| "Northern, Eastern, and Western | 1 |
| "Oregon | 7 |
| "Pennsylvania: | |
| "Eastern | 22 |
| "Middle | 6 |
| "Western | 10 |
| "Puerto Rico | 7 |
| "Rhode Island | 3 |
| "South Carolina | 11 |
| "South Dakota | 3 |
| "Tennessee: | |
| "Eastern | 5 |
| "Middle | 4 |
| "Western | 5 |
| "Texas: | |
| "Northern | 12 |
| "Southern | 22 |
| "Eastern | 7 |
| "Western | 13 |
| "Utah | 5 |
| "Vermont | 2 |
| "Virginia: | |
| "Eastern | 13 |
| "Western | 4 |
| "Washington: | |
| "Eastern | 4 |
| "Western | 8 |
| "West Virginia: | |
| "Northern | 3 |
| "Southern | 5 |
| "Wisconsin: | |
| "Eastern | 5 |
| "Western | 2 |
| "Wyoming | 3.". |

**SEC. 104. ESTABLISHMENT OF ARTICLE III COURT IN THE VIRGIN ISLANDS.**

(a) ESTABLISHMENT OF JUDICIAL DISTRICT.—

(1) VIRGIN ISLANDS.—Chapter 5 of title 28, United States Code, is amended by inserting after section 126 the following new section:

### "§ 126A. Virgin Islands

"The Virgin Islands constitutes 1 judicial district comprising 2 divisions.

"(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.

"Court for the Saint Croix Division shall be held at Christiansted.

"(2) The Saint Thomas and Saint John Division comprises the Islands of Saint Thomas and Saint John and adjacent islands and cays.

"Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for chapter 5 of title 28, United States Code, is amended by inserting after the item relating to section 126 the following:

"126A. Virgin Islands.".

(b) NUMBER OF JUDGES.—The table contained in section 133(a) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 2".

(c) BANKRUPTCY JUDGES.—The table contained in section 152(a)(2) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 0".

(d) JUDICIAL CONFERENCES OF CIRCUITS.—Section 333 of title 28, United States Code, is amended in the third sentence of the first undesignated paragraph—

(1) by striking ", the District Court of the Virgin Islands,"; and

(2) by striking "to the conferences of their respective circuits" and inserting "to the conference of the ninth circuit".

(e) JUDGES IN TERRITORIES AND POSSESSIONS.—Section 373 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in subsection (e), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(f) ANNUITIES FOR SURVIVORS OF CERTAIN JUDICIAL OFFICIALS OF THE UNITED STATES.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (1)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in paragraph (2)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(g) AUTHORITY OF ATTORNEY GENERAL.—Section 526(a)(2) of title 28, United States Code, is amended by striking "and of the district court of the Virgin Islands".

(h) COURTS DEFINED.—Section 610 of title 28, United States Code, is amended—

(1) by striking "the United States District Court for the District of the Canal Zone,"; and

(2) by striking "the District Court of the Virgin Islands,".

(i) UNITED STATES MAGISTRATE JUDGES.—Section 631(a) of title 28, United States Code, is amended—

(1) in the first sentence, by striking "the Virgin Islands, Guam," and inserting "Guam"; and

(2) in the second sentence, by striking "the Virgin Islands, Guam," and inserting "Guam".

(j) COURT REPORTERS.—Section 753(a) of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands" and inserting "and the District Court of Guam".

(k) FINAL DECISIONS OF DISTRICT COURTS.—Section 1291 of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,".

(l) INTERLOCUTORY DECISIONS.—Section 1292 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,"; and

(2) in subsection (d)(4)(A), by striking "the District Court of the Virgin Islands,".

(m) JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 1295(a) of title 28, United States Code, is amended in paragraphs (1) and (2)—

(1) by striking "the United States District Court for the District of the Canal Zone,"; and

(2) by striking "the District Court of the Virgin Islands,".

(n) UNITED STATES AS DEFENDANT.—Section 1346(b)(1) of title 28, United States Code, is amended by striking ", together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,".

(o) ADEQUATE REPRESENTATION OF DEFENDANTS.—Section 3006A(j) of title 18, United States Code, is amended by striking "the District Court of the Virgin Islands,".

(p) SAVINGS PROVISIONS.—

(1) TENURE OF INCUMBENT JUDGES.—A judge of the District Court of the Virgin Islands in office on the effective date of this section shall continue in office until the expiration of the term for which the judge was appointed, or until the judge dies, resigns, or is removed from office, whichever occurs first. When a vacancy occurs on the court on or after the effective date of this section, the President, in accordance with section 133(a) of title 28, United States Code, shall appoint, by and with the advice and consent of the Senate, a district judge for the District of the Virgin Islands.

(2) RETIREMENT RIGHTS AND BENEFITS.—The amendments made by this section shall not affect the rights under sections 373 and 376 of title 28, United States Code, of any judge of the District Court of the Virgin Islands who retires on or before the effective date of this section or who continues in office after that date under paragraph (1) of this subsection. Service as a judge of the District Court of the Virgin Islands appointed under section 24 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614) shall be included in calculating service under sections 371 and 372 of title 28, United States Code, and shall not be counted for purposes of section 373 of that title, if the judge is re-

appointed, after the effective date of this section, under section 133(a) of title 28, United States Code, as district judge for the District of the Virgin Islands.

(q) AMENDMENTS TO REVISED ORGANIC ACT OF THE VIRGIN ISLANDS.—

(1) REPEALS.—Sections 24, 25, 26, and 27 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614, 1615, 1616 and 1617) are repealed.

(2) RIGHTS AND PROHIBITIONS.—Section 3 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1561) is amended in the 23d undesignated paragraph—

(A) by inserting "article III;" after "section 9, clauses 2 and 3;" and

(B) by striking "That all offenses against the laws of the United States" and all that follows through "section 22(b) of this Act or" and inserting "That all offenses against the laws of the Virgin Islands which are prosecuted".

(3) JURISDICTION.—Section 21 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1611) is amended to read as follows:

**"SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.**

"(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

"(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

(4) INCOME TAX MATTERS.—Section 22 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1612) is amended to read as follows:

**"SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.**

"The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.".

(5) APPELLATE JURISDICTION.—Section 23A of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1613a) is amended—

(A) by striking "District Court of the Virgin Islands" each place it appears and inserting "United States District Court for the District of the Virgin Islands"; and

(B) in subsection (b), by striking "pursuant to section 24(a) of this Act: *Provided,* That no more than one of them may be a judge of a court established by local law." and inserting "pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.".

(r) ADDITIONAL REFERENCES.—Any reference in any provision of law to the "District Court of the Virgin Islands" shall, on and after the effective date of this section, be deemed to be a reference to the United States District Court for the District of the Virgin Islands.

(s) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. Any complaint or proceeding pending in the District Court of the Virgin Islands on the effective date of this section may be pursued to final determination in the United States District Court for the District of the Virgin Islands, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Federal Circuit, and the Supreme Court of the United States.

**SEC. 105. EFFECTIVE DATE.**

Except as provided in section 104(s), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE II—BANKRUPTCY JUDGESHIPS

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Enhanced Bankruptcy Judgeship Act of 2005".

**SEC. 202. AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.**

The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) 1 additional bankruptcy judgeship for the eastern district of California.

(3) 2 additional bankruptcy judgeships for the middle district of Florida.

(4) 2 additional bankruptcy judgeships for the northern district of Georgia.

(5) 1 additional bankruptcy judgeship for the southern district of Georgia.

(6) 1 additional bankruptcy judgeship for the eastern district of Kentucky.

(7) 1 additional bankruptcy judgeship for the district of Maryland.

(8) 3 additional bankruptcy judgeships for the eastern district of Michigan.

(9) 1 additional bankruptcy judgeship for the southern district of New York.

(10) 1 additional bankruptcy judgeship for the western district of Pennsylvania.

(11) 1 additional bankruptcy judgeship for the western district of Tennessee.

(12) 1 additional bankruptcy judgeship for the eastern district of Texas.

(13) 1 additional bankruptcy judgeship for the district of Utah.

**SEC. 203. TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the northern district of Florida.

(2) 2 additional bankruptcy judgeships for the middle district of Florida.

(3) 1 additional bankruptcy judgeship for the northern district of Indiana.

(4) 1 additional bankruptcy judgeship for the northern district of Mississippi.

(5) 1 additional bankruptcy judgeship for the district of Nevada.

(6) 1 additional bankruptcy judgeship for the western district of North Carolina.

(7) 1 additional bankruptcy judgeship for the southern district of Ohio.

(b) VACANCIES.—

(1) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in paragraph (2), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a)—

(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a) to such office, and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,

shall not be filled.

(2) MIDDLE DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the middle district of Florida—

(A) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under subsection (a)(2), and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,

shall not be filled.

(c) ELIGIBILITY FOR SUBSEQUENT APPOINTMENTS.—A judge holding office in any of the districts enumerated in subsection (a) shall, at the expiration of the term of the judge (other than by reason of paragraph (1)(B) or (2)(B) of subsection (b)), be eligible for reappointment as a bankruptcy judge in that district.

**SEC. 204. CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 102–361.—The following temporary bankruptcy judgeships authorized by the following paragraphs of section 3(a) of Public Law 102–361, as amended by section 307 of Public Law 104–317 (28 U.S.C.

152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The temporary bankruptcy judgeship for the district of Delaware authorized by paragraph (3).

(2) The temporary bankruptcy judgeship for the southern district of Illinois authorized by paragraph (4).

(3) The temporary bankruptcy judgeship for the district of Puerto Rico authorized by paragraph (7).

(b) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 109–8.—The following temporary bankruptcy judgeships authorized by the following subparagraphs of section 1223(b)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The 4 temporary bankruptcy judgeships for the district of Delaware authorized by subparagraph (C).

(2) The temporary bankruptcy judgeship for the southern district of Georgia authorized by subparagraph (E).

(3) One of the 3 temporary bankruptcy judgeships for the district of Maryland authorized by subparagraph (F).

(4) The temporary bankruptcy judgeship for the eastern district of Michigan authorized by subparagraph (G).

(5) The temporary bankruptcy judgeship for the district of New Jersey authorized by subparagraph (I).

(6) The temporary bankruptcy judgeship for the northern district of New York authorized by subparagraph (K).

(7) The temporary bankruptcy judgeship for the southern district of New York authorized by subparagraph (L).

(8) The temporary bankruptcy judgeship for the eastern district of North Carolina authorized by subparagraph (M).

(9) The temporary bankruptcy judgeship for the eastern district of Pennsylvania authorized by subparagraph (N).

(10) The temporary bankruptcy judgeship for the district of South Carolina authorized by subparagraph (S).

(11) The temporary bankruptcy judgeship for the western district of Tennessee authorized by subparagraph (Q).

**SEC. 205. GENERAL PROVISIONS.**

(a) TABLE OF JUDGESHIPS.—In order that the table contained in section 152(a)(2) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of bankruptcy judgeships authorized under sections 202 and 204, such table is amended to read as follows:

| **"Districts** | **Judges** |
|---|---|
| "Alabama: | |
| "Northern | 5 |
| "Middle | 2 |
| "Southern | 2 |
| "Alaska | 2 |
| "Arizona | 7 |
| "Arkansas: | |
| "Eastern and Western | 4 |
| "California: | |
| "Northern | 9 |
| "Eastern | 7 |
| "Central | 21 |
| "Southern | 4 |
| "Colorado | 5 |
| "Connecticut | 3 |
| "Delaware | 6 |
| "District of Columbia | 1 |
| "Florida: | |
| "Northern | 1 |
| "Middle | 10 |
| "Southern | 5 |
| "Georgia: | |
| "Northern | 10 |
| "Middle | 3 |
| "Southern | 4 |
| "Hawaii | 1 |
| "Idaho | 2 |
| "Illinois: | |
| "Northern | 10 |
| "Central | 3 |
| "Southern | 2 |
| "Indiana: | |
| "Northern | 3 |
| "Southern | 4 |
| "Iowa: | |
| "Northern | 2 |

| | |
|---|---|
| "Southern | 2 |
| "Kansas | 4 |
| "Kentucky: | |
| "Eastern | 3 |
| "Western | 3 |
| "Louisiana: | |
| "Eastern | 2 |
| "Middle | 1 |
| "Western | 3 |
| "Maine | 2 |
| "Maryland | 6 |
| "Massachusetts | 5 |
| "Michigan: | |
| "Eastern | 8 |
| "Western | 3 |
| "Minnesota | 4 |
| "Mississippi: | |
| "Northern | 1 |
| "Southern | 2 |
| "Missouri: | |
| "Eastern | 3 |
| "Western | 3 |
| "Montana | 1 |
| "Nebraska | 2 |
| "Nevada | 3 |
| "New Hampshire | 1 |
| "New Jersey | 9 |
| "New Mexico | 2 |
| "New York: | |
| "Northern | 3 |
| "Southern | 11 |
| "Eastern | 6 |
| "Western | 3 |
| "North Carolina: | |
| "Eastern | 3 |
| "Middle | 2 |
| "Western | 2 |
| "North Dakota | 1 |
| "Ohio: | |
| "Northern | 8 |
| "Southern | 7 |
| "Oklahoma: | |
| "Northern | 2 |
| "Eastern | 1 |
| "Western | 3 |
| "Oregon | 5 |
| "Pennsylvania: | |
| "Eastern | 6 |
| "Middle | 2 |
| "Western | 5 |
| "Puerto Rico | 3 |
| "Rhode Island | 1 |
| "South Carolina | 3 |
| "South Dakota | 2 |
| "Tennessee: | |
| "Eastern | 3 |
| "Middle | 3 |
| "Western | 6 |
| "Texas: | |
| "Northern | 6 |
| "Eastern | 3 |
| "Southern | 6 |
| "Western | 4 |
| "Utah | 4 |
| "Vermont | 1 |
| "Virgin Islands | 0 |
| "Virginia: | |
| "Eastern | 5 |
| "Western | 3 |
| "Washington: | |
| "Eastern | 2 |
| "Western | 5 |
| "West Virginia: | |
| "Northern | 1 |
| "Southern | 1 |
| "Wisconsin: | |
| "Eastern | 4 |
| "Western | 2 |
| "Wyoming | 1.". |

(b) SENSE OF CONGRESS.—It is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

**SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE III—NINTH CIRCUIT REORGANIZATION

**SEC. 301. SHORT TITLE.**

This title may be cited as the "Judicial Administration and Improvements Act of 2005".

**SEC. 302. DEFINITIONS.**

In this title:

(1) FORMER NINTH CIRCUIT.—The term "former ninth circuit" means the ninth judicial circuit of the United States as in existence on the day before the effective date of this title.

(2) NEW NINTH CIRCUIT.—The term "new ninth circuit" means the ninth judicial circuit of the United States established by the amendment made by section 303(2)(A).

(3) TWELFTH CIRCUIT.—The term "twelfth circuit" means the twelfth judicial circuit of the United States established by the amendment made by section 303(2)(B).

**SEC. 303. NUMBER AND COMPOSITION OF CIRCUITS.**

Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking "thirteen" and inserting "fourteen"; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... California, Guam, Hawaii, Northern Mariana Islands.";

and

(B) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.".

**SEC. 304. NUMBER OF CIRCUIT JUDGES.**

The table contained in section 44(a) of title 28, United States Code, as amended by section 102(c) of this Act, is further amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... 19";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... 14".

**SEC. 305. PLACES OF CIRCUIT COURT.**

The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... Honolulu, Pasadena, San Francisco.";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... Las Vegas, Missoula, Phoenix, Portland, Seattle.".

**SEC. 306. ASSIGNMENT OF CIRCUIT JUDGES.**

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this title—

(1) is in California, Guam, Hawaii, or the Northern Mariana Islands shall be a circuit judge of the new ninth circuit as of such effective date; and

(2) is in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

**SEC. 307. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this title may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

**SEC. 308. SENIORITY OF JUDGES.**

The seniority of each judge—

(1) who is assigned under section 306, or

(2) who elects to be assigned under section 307,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

**SEC. 309. APPLICATION TO CASES.**

The following apply to any case in which, on the day before the effective date of this title, an appeal or other proceeding has been filed with the former ninth circuit:

(1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this title had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this title been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) If a petition for rehearing en banc is pending on or after the effective date of this title, the petition shall be considered by the court of appeals to which it would have been submitted had this title been in full force and effect at the time that the appeal or other proceeding was filed with the court of appeals.

**SEC. 310. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.**

Section 291 of title 28, United States Code, is amended by adding at the end the following:

"(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

"(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.".

**SEC. 311. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.**

Section 292 of title 28, United States Code, is amended by adding at the end the following:

"(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may, in the public interest—

"(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

"(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

"(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

"(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.".

**SEC. 312. ADMINISTRATION.**

The court of appeals for the ninth circuit as constituted on the day before the effective date of this title may take such administrative action as may be required to carry out this title and the amendments made by this title. Such court shall cease to exist for administrative purposes 2 years after the date of the enactment of this Act.

**SEC. 313. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect no later than December 31, 2006.

# TITLE IV—AUTHORIZATION OF APPROPRIATIONS

**SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each of fiscal years 2006 through 2009 such sums as are necessary to carry out this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act. Funds appropriated pursuant to this section in any fiscal year shall remain available until expended.

## PURPOSE AND SUMMARY

The purpose of Title I of H.R. 4093, "Circuit and District Judgeships," is to authorize the President to appoint, by and with the advice and consent of the Senate, additional circuit and district court judges. These authorizations were developed in coordination with the U.S. Judicial Conference and substantially based on their recommendations. The circuit and district judgeship requirements have been updated from the 108th Congress and are considered meritorious. Congress last enacted an omnibus judgeship bill in 1990.

Title II of H.R. 4093 entitled, "Bankruptcy Judgeships," authorizes the appointment of additional bankruptcy judges, subject to the provisions of 28 U.S.C. § 152. The request for additional bankruptcy judgeships was developed in coordination with the U.S. Judicial Conference and is substantially based on their recommendations.

Title III of H.R. 4093 entitled, the "Ninth Circuit Reorganization," realigns the existing Ninth Circuit Court of Appeals into two circuits: a newly-created Twelfth Circuit that is comprised of judicial districts in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington; and a streamlined new Ninth Circuit, which includes all judicial districts in California, Hawaii, the Northern Mariana Islands, and Guam.

Congress has considered proposals to realign the Ninth Circuit for more than 60 years. The Ninth is by far the largest of the thirteen courts of appeals. The size of the Ninth—as measured by the geography of the Circuit, the number of persons it serves, and the volume of cases before it—prevents litigants from receiving timely legal redress. With 28 authorized judgeships, the Ninth is substantially larger than any other circuit court. The U.S. Judicial Conference has requested that Congress authorize five new permanent circuit judgeships and two additional temporary circuit judgeships for the Ninth.

The Committee believes the addition of new judgeships without needed structural reform will exacerbate the unstable development of case law, delays in the adjudication and disposition of cases, and the perpetuation of conditions that have led the Ninth Circuit to be widely recognized as having both an extraordinary number of decisions that the U.S. Supreme Court must hear on appeal as well as a high rate of reversals. The Committee also notes that the Ninth Circuit is notorious for having an excessive number of cases summarily or unanimously reversed by the U.S. Supreme Court. The Committee concurs with the recommendations of two independent commissions, the former Chief Justice of the United States, William Rehnquist, and four Associate Justices of the U.S.

Supreme Court that the Ninth should be reorganized. The Committee believes the only viable long-term solution is a structural realignment.

Title IV contains language that was requested by the Administrative Office of the Courts, which authorizes such appropriations as are necessary to implement the provisions of H.R. 4093.

## BACKGROUND AND NEED FOR THE LEGISLATION

### CONSTITUTIONAL AUTHORITY TO ORGANIZE INFERIOR COURTS

Art. I, § 8, cl. 9 of the U.S. Constitution grants to the Congress of the United States the sole authority and responsibility "[t]o constitute Tribunals inferior to the Supreme Court."

Art. III, § 1, reiterates Congress' unique role in providing for the organization and effective functioning of the "judicial Power of the United States" by declaring that such power "shall be vested . . . in such inferior Courts as the Congress may from time to time ordain and establish." Pursuant to its Constitutional authority, Congress has enacted numerous laws to organize and provide for the creation, composition, and from time to time, the reorganization of inferior courts. These laws are designed to ensure that the "judicial Power of the United States" is administered efficiently and effectively and that its operations protect the rights of the American people. The principal statutes that regulate and organize the Courts of Appeals are codified with great specificity in title 28 of the United States Code. In 28 U.S.C. § 40, the Congress has prescribed, *inter alia*, the creation and composition of circuit courts of appeals, the number and composition of circuits, the number of judges authorized to be appointed to each circuit, and the places where the courts of appeals shall hold regular sessions.

### THE CREATION OF NEW JUDGESHIPS FOR THE REALIGNED NINTH AND OTHER CIRCUITS WILL GREATLY ENHANCE THE OPERATIONS OF THE FEDERAL JUDICIARY

The House Committee on the Judiciary received the submission of the Judicial Conference of the United States, which requested Congress to authorize additional Art. III judgeships. The request of the Conference was based upon a biennial review of the judgeship needs of all U.S. Courts of Appeals and U.S. District Courts that was completed in March 2005. The Committee concurs that the creation of 12 new judgeships in five courts of appeals and 56 new judgeships in 29 district courts will enhance the ability of the Federal court system to administer civil and criminal justice matters appropriately. Additionally, the Committee supports the creation of 17 new permanent bankruptcy judgeships and eight new temporary bankruptcy judgeships.

### THE CREATION OF THE COURT OF APPEALS SYSTEM AND THE NINTH CIRCUIT

In 1891, Congress created the regional court of appeals system and the Ninth Circuit by enacting the Evarts Act. Describing the Act's significance, Associate Justice O'Connor has written, "[t]he establishment of a court of appeals and the expansion of the discretionary power of the Supreme Court to grant or deny review in many cases meant that from 1891 on the great majority of Federal

court appellate decision-making would be made at the level of the circuit court of appeals. That effect is still felt today as the Supreme Court on which I sit accepts for review less than 2 percent of the petitions filed. The great bulk of Federal case law is developed and made in the courts of appeals."

With the great bulk of Federal case law emanating from regional courts of appeals and a recognition that, as a practical matter, courts of appeals are the courts of last resort for the overwhelming majority of litigants, the Committee takes seriously its obligation to ensure that the regional courts of appeals system functions appropriately and effectively.

Historically, Congress has exercised this obligation in a number of ways to include, from time to time, adding territories and states to existing circuits and periodically re-aligning circuits to improve the administration of judicial functions. Two recent examples include the realignment by Congress of the Eighth Circuit by creating the Tenth Circuit in 1929, and similarly, the creation of the Eleventh Circuit from the Fifth in 1981.

When the Ninth Circuit was established, the American West was characterized by a vast geography that was sparsely populated. The continental contours of the circuit have been unchanged since 1912 when Arizona was added to the Ninth. According to census figures from 1910, the combined population of the states that comprise the Ninth today constituted less than 6 percent of the total U.S. population. In stark contrast, today the circuit encompasses more than 58 million people, nearly 20 percent of the total U.S. population. This figure exceeds by 27 million the number of people in the next most populous Circuit, the Sixth, and by 37 million the average population of the other circuits.

There is no foreseeable end to the phenomenal population growth in the region. Three of the five fastest-growing American cities with populations that exceed 1,000,000 and seven of the ten fastest-growing cities with populations that exceed 100,000 lie within the Ninth's confines.

The Ninth's enormity dominates over the other regional circuits. The Ninth is 25 times larger than the smallest of the circuits, the First. The Committee believes that a regional court of appeals system that places one in five Americans and 40 percent of the Nation's geographic area in a single regional circuit with the ten remaining regional courts of appeals dividing 60 percent of the Nation's land mass is unwieldy and inefficient.

## THE NINTH CIRCUIT: STRUCTURE AND CONCERNS

The U.S. Courts of Appeals for the Ninth Circuit is comprised of nine states and includes the districts of Alaska, Arizona, Central California, Eastern California, Northern California, Southern California, Hawaii, Idaho, Montana, Nevada, Oregon, Eastern Washington, Western Washington, Guam, and Northern Mariana Islands. The Committee notes that the average number of states in the other circuits is 4.25 and that the Ninth's composition is more than twice as large.

Twenty-four of its 28 authorized judgeships are filled and there are 23 senior judges assigned to the circuit. Currently, the Ninth Circuit has 47 serving judges, four vacancies, and a request for seven additional judgeships, for a total of 58. This figure ap-

proaches twice the number of total serving judges in the next largest circuit, the Sixth, with 29 serving judges and a request for one additional judgeship for a total of 30. The Committee notes the average total number of judges among all other circuits is 20 and that the Ninth's requirements approach three times that figure.

During the year ending June 30, 2005, 15,685 appeals were filed in the Ninth. This number represents three times the average of other circuits and approximately one-quarter of all appeals heard by U.S. Courts of Appeals. The Committee notes that the median time for disposing of an appeal from filing is approximately 40 percent longer in the Ninth than the average of the other Courts of Appeals. This delay increases both the expenses incurred by parties and the uncertainty associated with the ultimate resolution of the case. The lives of the individuals involved are seriously and negatively impacted when the Federal court system fails to dispense justice in a swift, unbiased, and equitable manner. The Committee is convinced that it can no longer be maintained, and that the enormity of the Ninth Circuit presents unique administrative challenges that are responsible for the persistent inability of the Ninth to meet the legitimate needs and expectations of its citizens.

The Committee is concerned that these delays may imperil the spirit of fundamental guarantees that are provided by the U.S. Constitution. Specifically, the Committee is concerned that the Sixth Amendment guarantee to an accused of a "speedy—trial" in all criminal prosecutions and the Equal Protection clause's requirement that all American citizens receive equal treatment under the law in every Federal court are unduly placed in jeopardy by the size, scope, and failure of the Ninth to eliminate needless delays and materially reduce its backlog.

The Committee notes that the Ninth's backlog of total appeals pending recently stood at 13,417 cases. This number exceeded by almost three times the number of total appeals pending in the circuit with the second-highest total, the Fifth. Further, the Committee notes that the Ninth's 56.1 percent increase in appeals filed in the 4 years that ended September 30, 2004 far outpaced the rate of increase in any other district.

The following chart summarizes the workload of the Ninth relative to the other circuits.

| Data | D.C. | 1st | 2nd | 3rd | 4th | 5th | 6th | 7th | 8th | 9th | 10th | 11th |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| App. Filed 04 | 1,390 | 1,723 | 7,008 | 3,871 | 4,957 | 8,509 | 4,841 | 3,377 | 3,101 | 14,274 | 2,646 | 7,065 |
| % Chg. Prv. Yr. | 24.0 | -6.6 | 10.2 | -2.2 | 1.4 | -1.2 | -2.5 | -4.0 | -2.8 | 10.9 | 4.2 | 1.2 |
| % Chg. Prv. Four Yrs. | -7.7 | 17.8 | 43.3 | 11.2 | 5.7 | 3.1 | -1.5 | -2.4 | -2.0 | 56.1 | -0.4 | 0.0 |
| App. Trm. 04 | 1,155 | 1,643 | 4,611 | 2,047 | 4,713 | 8,100 | 4,655 | 3,294 | 2,916 | 12,151 | 2,448 | 6,908 |
| Tot. App. Pnd. | 1,266 | 1,601 | 4,240 | 3,332 | 2,766 | 4,854 | 4,534 | 2,375 | 1,993 | 13,417 | 2,151 | 3,542 |
| Med. Time Disp. | 10.5 | 11.2 | 11.0 | 11.6 | 7.5 | 8.5 | 16.8 | 10.3 | 9.8 | 14.0 | 11.7 | 8.8 |

Data Key

**App. Filed 04** – The number of appeals filed for 12-month period ending 9-30-04.

**% Chg. Prv. Yr.** – The percentage increase or decrease of appeals filed from the previous year.

**% Chg. Prv. Four Yrs.** – The percentage increase or decrease of appeals filed from 9-30-00 to 9-30-04.

**App. Term. 04** – The number of appeals terminated for the 12-month period ending 9-30-04.

**Tot. App. Pnd.** – The total number of appeals still pending for the 12-month period ending 9-30-04.

**Med. Time Disp.** – The median time from filing notice of appeal to disposition (in months) for the 12-month period ending 9-30-04.

The Ninth Circuit is the preferred venue for the filing of administrative appeals. A large increase in immigration appeals accounts for an inordinate percentage, approximately half, of the Ninth's workload. The Committee is presently engaged in a major restructuring of our Nation's immigration laws. Ensuring that sensible and uniform immigration policies are enacted and applied equitably throughout the Nation is a major component. Nevertheless, the Committee notes it is the Ninth's broad and well-earned reputation for the lenient enforcement of our current immigration laws that has directly contributed to this increased caseload—a condition that some seek to assert as a justification for Congress suspending necessary action to restructure the circuit.

Like other circuits, the Ninth is administered generally by a chief judge and circuit judicial council supported by a circuit executive. A clerk's office handles the administration of the court of appeals. The Ninth has adopted unique practices to facilitate the processing of the voluminous number of cases that it must handle. Among these practices is the extensive use of staff attorneys and the exclusive reliance on "limited" *en banc* panels.

While the court employs six to eight attorneys who serve as mediators, the court conducts most of its work through the use of

three-judge panels. Each active judge serves on oral argument panels seven or 8 weeks each year, hearing approximately 32 to 36 cases in each of those weeks. When there are not enough active and senior judges to create argument panels, the court fills out panels with district court judges.

Judges have frequently commented on the importance of "collegiality" when sitting on a three-judge panel. Frequent interaction among judges can enhance understanding of one another's reasoning and decrease the possibility of misinformation and misunderstandings. There are more than 3,000 possible combinations of panels in the Ninth. This incredible number prevents individual judges from becoming better acquainted with the personalities and jurisprudence of their colleagues.

The Ninth has been criticized for permitting its jurisprudence to be developed by three-judge panels with the outcome of particular cases riding subjectively on the makeup of a given panel rather than objectively on general principles of circuit law. This erodes confidence in the law-declaring role, one of a circuit's two primary functions (the other being to correct errors on appeal).

Circuit judges also serve for one or 2 months each year on screening panels that review cases that were preliminarily screened by court staff. The Committee is informed that it is customary for circuit judges to rely heavily on the recommendations of staff attorneys and that the time spent by a judge on a prescreened matter may be measured in mere minutes. Such a cursory review may lead to an erosion of confidence in the public perception of the judiciary.

Like other circuits, the Ninth may sit *en banc* to maintain the uniformity of its decisions and to decide cases involving questions of exceptional importance. The Ninth differs from other circuits, however, in that it is the only Circuit to ever use a "limited" *en banc* court consisting of the Chief Judge and, pursuant to a recently approved local Circuit rule, 14 others (until this year, the procedure was limited to 11 judges total). The effect of the Ninth's long-standing practice was that a majority of six judges (now eight) can establish circuit-wide precedent for one-fifth of the Nation's population and on behalf of a court authorized 28 judges in full-time active service. The Committee notes the Ninth adopted this local rule change only 7 years after the Commission on Structural Alternatives for the Federal Courts of Appeals, also known as the White Commission, issued its final report that called upon the circuit to abolish its *en banc* practice. Further, the Committee notes that it was a desire to ensure that a full *en banc* hearing was available to appellants that motivated the judges of the former Fifth Circuit to unanimously support the realignment that resulted in the creation of the Eleventh Circuit.

The Ninth's rules do permit a judge dissatisfied with the decision of a "limited" *en banc* court to call for a vote on whether the full court should convene to reconsider the case. However, the Committee notes the court has never voted in favor of a "full-court" rehearing. The Committee considers the Ninth's exclusive and extensive reliance on "limited" *en banc* hearings to be a direct function of the size, geography, and extraordinary number of judgeships of the court.

The Committee notes that commentators have observed that full *en banc* hearings can be extraordinarily useful in serving a court's development of coherent, consistent, and predictable case law, in promoting familiarity and collegiality among colleagues, and in eliminating intra-circuit conflicts. The Committee notes the fact that the Ninth's "limited" *en banc* practice has resulted in denying appellants the opportunity to have all circuit judges in regular active service participate in an *en banc* hearing. The Committee recognizes that the Ninth's practice is more convenient for the Chief Judge and the limited number of judges selected to participate but the Committee, nevertheless, urges the Ninth Circuit to reconsider this practice and to instead adopt the normal *en banc* process utilized in all other circuits. The goals of an appellate court must include the provision of well-reasoned, predictable, timely, and uniform decisions. Towards this end, the Committee notes another benefit of a re-aligned Ninth will be to facilitate the practice of pre-circulating opinions, a practice common to the Supreme Court and the other circuit Courts of Appeals. This could prevent intra-circuit conflicts and foster greater awareness of the body of law created by a circuit.

## EXTRAORDINARY HISTORY OF CONGRESSIONAL REVIEW OF REALIGNMENT

Even before the passage of the Evarts Act, Congress was informed that the enormous size of the proposed Ninth Circuit would create inefficiencies, delays, and administrative burdens. In 1890, Frank M. Stone, a San Francisco attorney, wrote to Senator George F. Edmunds asking the Senate to give further thought to the massive geographical jurisdiction of the proposed Ninth. Presciently, he wrote that such a large circuit "would be more than any one such court of appeals—could possibly attend to without the business running behind, and the calendar becoming clogged."

Forewarned, Congress nevertheless created the Ninth largely along the continental boundaries that exist today. In 1937, Ninth Circuit Judge William Denman testified before the Senate on the need to add two additional judges to the court in order to process the number of appeals and clear the court's backlog. He stated, "[w]e need these two judges now," but acknowledged to Congress that, "you will have to divide the circuit and have still more judges" later, adding, "it is inevitable that the northern part of the circuit will eventually be separated from the southern part."

David C. Frederick, the author of Rugged Justice, a history of the Ninth's first half century, describes the situation in familiar terms, "the Ninth Circuit's geographical size suggested two competing options: one, to increase the number of judges on the court; the other, to divide the circuit, as Congress had done with the Eighth. . . . The predominant issue . . . was whether administrative need justified division. Denman did not think so. In 1937, when the threat of division was low, he estimated the number of appeals . . . [to not be] significant enough to warrant a split."

By 1941, Senator Bone and Representative Magnuson from Washington introduced legislation in each chamber to divide the circuit into two, creating a new Eleventh Circuit that would have contained Alaska, Idaho, Montana, Oregon, and Washington. A furious debate was ignited but Congress chose not to act after the

Ninth Circuit adopted a new operating rule and issued a well-timed announcement that they would increase sittings in Seattle and Portland. Despite his earlier pronouncements about the inevitability of a split, Judge Denman orchestrated the opposition among California-based Ninth Circuit judges and successfully defeated the proposal.

The next serious attempt to deal with streamlining the Ninth Circuit came in 1973 when Congress created the so-called "Hruska" Commission to study circuit realignment and the appellate courts' internal operating procedures. The Hruska Commission filed a report in 1973 that recommended a split of both the Fifth and the Ninth Circuits but Congress did not act for 7 years. In 1978, it passed an omnibus judgeship bill that authorized the use of divisions for certain administrative tasks as well as limited *en banc* functions, along with new judgeships for the Fifth and Ninth. Judges from the Fifth, however, chose to preserve the rights of appellants to seek a full court *en banc* review and determined it was better to realign than to insist on a continued expansion of the size of the court.

In 1989, Senator Slade Gorton of Washington and seven other Senators introduced legislation to create a new Twelfth Circuit composed of Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands. Similar proposals were made in succeeding Congresses.

Responding to ongoing interest in the subject, the 105th Congress created the Commission on Structural Alternatives for the Federal Courts of Appeals. The statute directed the Commission to study the present circuit configuration and the structure and alignment of the courts of appeals, with particular reference to the Ninth.

In its report issued on December 18, 1988, the Commission proposed that the Ninth be organized into three regionally-based adjudicative divisions which would hear and decide all appeals from the district courts. The Committee's Subcommittee on Courts and Intellectual Property conducted a hearing on the Commission's report during the 106th Congress. Witnesses and other interested parties roundly criticized the findings because they maintained an implementation of intra-circuit divisions would lead to the abandonment of circuit-wide *stare decisis* and ultimately to the creation of more intra-circuit conflicts.

Notably, five Justices of the U.S. Supreme Court, including then Chief Justice Rehnquist, wrote the chair of the White Commission to offer their suggestions. According to the final report, "[o]f the four who commented on the Ninth Circuit, all were of the opinion that it is time for a change. In general, the Justices expressed concern about the ability of judges . . . to keep abreast of the court's jurisprudence and about the risks of intra-circuit conflicts in a court with an output as large as that court's. Some expressed concern about the adequacy of the Ninth Circuit's *en banc* process to resolve intra-circuit conflicts." Chief Justice Rehnquist wrote favorably of the Commission's "division" proposal but added that he "share[d] many of the concerns expressed by my colleagues [Justices O'Connor, Kennedy, Scalia, and Stevens] on the Court who previously corresponded with the Commission and advocated that

some change in the structure of the Court of Appeals for the Ninth Circuit is needed."

In addition to the two independent commissions that have studied and provided to Congress their recommendations, which were to re-organize the Ninth Circuit structurally to improve the circuit's ability to render quality decisions and to quickly and efficiently dispose of cases, the Committee has identified no fewer than 23 hearings that have been conducted in Congress since 1983 and at least 16 bills that have been introduced since the 1973.

The Committee finds no basis for any assertion that there has been inadequate process devoted to this serious public policy matter by Congress nor can the Committee support any implication that the voluminous record, which has been developed over decades ought to be disregarded so the existing Ninth Circuit may enjoy another 2 years of unchecked growth.

Delays in adjudicating cases may be more understandable to litigants if the quality of final decisions were enhanced. Unfortunately, there is ample evidence that something is systemically amiss with Ninth Circuit decision-making. The Committee notes it is statistically incorrect to equate the reversal rate of the Ninth, which typically has a high number of cases granted *certiorari* by the Supreme Court, with that of a smaller circuit, such as the Eleventh, which may average only one or two cases before the Court in a given term.

Two other phenomena are of more serious concern than the rate of reversals: the large number of Ninth Circuit cases that the Supreme Court feels consistently obliged to grant discretionary review; and the extraordinary number of summary reversals and unanimous reversals of Ninth decisions. Illustrative of this is the fact that during one recent 5-year term, the Supreme Court heard nearly twice as many cases from the Ninth as the next "nearest" circuit, the Sixth.

The Committee notes that the new Twelfth Circuit will have the ability to adopt the precedents that currently exist in the present Ninth and expects little confusion as to what the controlling precedents will be in the new circuit.

The Committee notes that there may be confusion about the resources that are currently authorized to the states that would be in the new Ninth Circuit and those that will be made available under H.R. 4093. According to the Administrative Office of the Courts, the jurisdictions that will be in the new Ninth account for 72 percent of the caseload and are currently authorized 15 active service judgeships or 54 percent of judicial resources in the existing Ninth. When fully implemented, the new Ninth will have 22 such judgeships and its relative share of judicial resources will rise to 63 percent. To accommodate the caseload demands in California, H.R. 4093 directs 100 percent of the seven new judgeships to that state. Again, it is worth noting that California will receive seven new judgeships under H.R. 4093. This number exceeds the number of new judgeships allotted to the rest of the Nation.

The Committee is committed to securing all reasonable and necessary appropriations to fully implement H.R. 4093. Towards that end, the Committee included in the reported measure the appropriations language requested by the Administrative Office of the

Courts. The Committee also prepared for the realignment and new judgeships in its submission to the Budget Committee.

The Committee understands there to be a number of vacant and underutilized court facilities that may be used to assist in the operations of the new Twelfth Circuit. The Committee strongly encourages the efficient use of such facilities. While the Committee is always conscious of the necessity to maximize budget savings, the Committee considers increasing the quality of the Federal court system and improving the public's access to justice to be benefits that are of equal or more importance.

The Committee notes that some may have concern that the new Ninth will still have a large caseload. Discussing a different realignment, Professor Arthur Hellman testified before the Subcommittee on Courts, the Internet and Intellectual Property in the 108th Congress that he believed that if a realignment was otherwise acceptable that, "the fact that the new Ninth Circuit would still be a very large circuit is not I think a reason for not doing it."

The Committee notes that H.R. 4093 provides authority to the Chief Judges of the realigned circuits to temporarily assign, upon request, and consistent with the public interest, a judge or judges to the other circuit.

The creation of more judgeships in the absence of necessary reform will not improve the administration of justice in the United States. Circuit Courts of Appeals must be organized in a manner to promote administrative efficiencies and with an eye towards distributing judgeships to achieve structural coherence within each circuit. The realigned Ninth and Twelfth Circuits will result in greater proximity and access by litigants, increased productivity, reduced travel expenses for judges and the public, enhanced collegiality among judges, and more consistency and coherence in the development of circuit-wide case law.

The Committee notes the current Ninth Circuit far surpasses the size of the pre-1980 Fifth Circuit that Congress re-aligned into the present Fifth and Eleventh Circuits. In fact, the Ninth's 2004 population of 58.3 million equals more than 96 percent of the 60.6 million people that reside in the present Fifth and Eleventh Circuits combined.

The Committee considers the question before Congress to be not whether the Ninth Circuit provides an adequate or minimally acceptable level of judicial process but whether justice may be better served by re-aligning the circuit into two or more circuits. There are limits to how large a circuit court ought to grow. The Committee is convinced the only feasible long-term solution is for the Ninth to be re-structured rather than to grow inexorably.

Finally, the Committee notes again that it is the province of the Congress to provide for the organization of the inferior courts. Recognizing this, the Judicial Conference Committee on Court Administration and Case Management recommended in September 2005 that the "Conference not take a position either endorsing or opposing legislation providing for the division of the Ninth Circuit. The committee added, [t]hese—decisions are rightly the province of the legislative and executive branches."

## HEARINGS

The Committee on the Judiciary held no hearings on H.R. 4093.

## COMMITTEE CONSIDERATION

On October 27, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 4093 with an amendment to the House by a recorded vote of 22 to 12, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth the following rollcall votes that occurred during the Committee's consideration of H.R. 4093:

1. **The Committee voted 14 ayes to 21 nays not to adopt an amendment offered by Rep. Berman that would have struck Title III from H.R. 4093.**

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | | X | |
| Mr. Coble | | X | |
| Mr. Smith (Texas) | | X | |
| Mr. Gallegly | | X | |
| Mr. Goodlatte | | X | |
| Mr. Chabot | | X | |
| Mr. Lungren | | X | |
| Mr. Jenkins | | X | |
| Mr. Cannon | | X | |
| Mr. Bachus | | | |
| Mr. Inglis | | X | |
| Mr. Hostettler | | X | |
| Mr. Green | | X | |
| Mr. Keller | | X | |
| Mr. Issa | | X | |
| Mr. Flake | | X | |
| Mr. Pence | | X | |
| Mr. Forbes | | X | |
| Mr. King | | X | |
| Mr. Feeney | | X | |
| Mr. Franks | | X | |
| Mr. Gohmert | | X | |
| Mr. Conyers | X | | |
| Mr. Berman | X | | |
| Mr. Boucher | | | |
| Mr. Nadler | X | | |
| Mr. Scott | X | | |
| Mr. Watt | X | | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | | | |
| Ms. Waters | X | | |
| Mr. Meehan | X | | |
| Mr. Delahunt | X | | |
| Mr. Wexler | | | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Ms. Sánchez | X | | |
| Mr. Van Hollen | X | | |
| Ms. Wasserman Schultz | X | | |
| Mr. Sensenbrenner, Chairman. | | | |
| Total | 14 | 21 | |

2. Final Passage. The motion to report the bill, H.R. 4093, favorably as amended to the House was agreed to by a rollcall vote of 22 yeas to 12 nays.

ROLLCALL NO. 2

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | X | | |
| Mr. Coble | X | | |
| Mr. Smith (Texas) | X | | |
| Mr. Gallegly | X | | |
| Mr. Goodlatte | X | | |
| Mr. Chabot | X | | |
| Mr. Lungren | X | | |
| Mr. Jenkins | X | | |
| Mr. Cannon | X | | |
| Mr. Bachus | X | | |
| Mr. Inglis | X | | |
| Mr. Hostettler | X | | |
| Mr. Green | X | | |
| Mr. Keller | X | | |
| Mr. Issa | X | | |
| Mr. Flake | X | | |
| Mr. Pence | X | | |
| Mr. Forbes | X | | |
| Mr. King | X | | |
| Mr. Feeney | X | | |
| Mr. Franks | X | | |
| Mr. Gohmert | X | | |
| Mr. Conyers | | X | |
| Mr. Berman | | X | |
| Mr. Boucher | | | |
| Mr. Nadler | | X | |
| Mr. Scott | | X | |
| Mr. Watt | | X | |
| Ms. Lofgren | | X | |
| Ms. Jackson Lee | | | |
| Ms. Waters | | X | |
| Mr. Meehan | | | |
| Mr. Delahunt | | | |
| Mr. Wexler | | | |
| Mr. Weiner | | X | |
| Mr. Schiff | | X | |
| Ms. Sánchez | | X | |
| Mr. Van Hollen | | X | |
| Ms. Wasserman Schultz | | X | |
| Mr. Sensenbrenner, Chairman. | | | |
| Total | 22 | 12 | |

## Committee Oversight Findings

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 4093, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 21, 2005.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gregory Waring, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

*H.R. 4093—Federal Judgeship and Administrative Efficiency Act of 2005.*

### SUMMARY

H.R. 4093 would authorize 93 new permanent and temporary Federal judgeships and would extend the authority for specific judgeships in various circuit, district, and bankruptcy courts. CBO estimates that the mandatory pay and benefits for those positions would increase direct spending by $72 million over the next five years and $157 million over the 2006–2015 period.

In addition, CBO estimates that implementing the bill would cost about $400 million over the 2006–2010 period, primarily to pay for support of the additional judgeships authorized in the bill and to create a new, Twelfth Judicial Circuit. That estimate does not include the cost of a headquarters facility for the new Twelfth Judicial Circuit. Options for the new headquarters facility include constructing a new building or renovating an existing building. We estimate such costs could range from about $20 million to over $80 million over the 2006–2010 period, subject to appropriations of the necessary amounts.

The legislation contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on State, local, or tribal governments.

### MAJOR PROVISIONS

H.R. 4093 would:

- Authorize nine permanent and three temporary circuit judgeships;

- Authorize 44 permanent and 12 temporary district judgeships;
- Convert or extend four temporary district judgeships that are expiring;
- Convert the district court in the Virgin Islands to an article III court;
- Authorize 17 permanent and eight temporary bankruptcy judgeships;
- Convert several temporary bankruptcy judgeships to permanent status;
- Modify the jurisdiction of the current Ninth Judicial Circuit to include California, Guam, Hawaii, and Northern Mariana Islands; and
- Create a Twelfth Judicial Circuit to have jurisdiction over the States of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the legislation is shown in the following table. The effects of this legislation fall within budget function 750 (administration of justice).

BASIS OF ESTIMATE

For this estimate CBO assumes the legislation will be enacted in December 2005, and that the necessary amounts to implement the bill will be appropriated for each year.

*Spending Subject to Appropriation*

The 93 judgeships authorized in the legislation would, require administrative support, and office space. Based on information from the Administrative Office of the United States Courts (AOUSC), CBO expects that discretionary expenditures for support costs associated with each judge would amount to $560,000 a year (in 2006 dollars). In addition, each judge would need equipment and furniture. CBO estimates that the administrative expenses of the additional judgeships in the legislation would cost $9 million in fiscal year 2006 and nearly $270 million over the 2006–2010 period.

By Fiscal Year, in Millions of Dollars

| | 2006 | 2007 | 2008 | 2009 | 2019 |
|---|---|---|---|---|---|
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION[1] | | | | | |
| Judiciary Support Costs | | | | | |
| Estimated Authorization Level | 17 | 70 | 60 | 62 | 63 |
| Estimated Outlays | 9 | 72 | 61 | 62 | 63 |
| U.S. Marshals Service Support | | | | | |
| Estimated Authorization Level | 21 | 22 | 22 | 23 | 24 |
| Estimated Outlays | 10 | 30 | 22 | 23 | 23 |
| Support for New Twelfth Judicial Circuit | | | | | |
| Estimated Authorization Level | 13 | 4 | 4 | 4 | 4 |
| Estimated Outlays | 6 | 10 | 4 | 4 | 4 |
| Total Discretionary Changes | | | | | |
| Estimated Authorization Level | 51 | 96 | 86 | 89 | 91 |
| Estimated Outlays | 25 | 112 | 87 | 89 | 91 |
| CHANGES IN DIRECT SPENDING | | | | | |
| Additional Judgeships | | | | | |
| Estimated Budget Authority | 4 | 17 | 17 | 17 | 17 |
| Estimated Outlays | 4 | 17 | 17 | 17 | 17 |

Note: Components may not sum to totals because of rounding.
1. Excludes costs of either renovating existing office space or constructing new space for the headquarters of the New Twelfth Judicial Circuit.

The additional District judgeships in the bill would also require staffing from the U.S. Marshals Service for court security and prisoner transportation. Based on information from the U.S. Marshals Service, CBO estimates that under the legislation the agency would provide 180 deputy marshals, 45 support staff, and an additional security inspector. CBO estimates the additional personnel would cost $10 million in fiscal year 2006 and about $110 million over the 2006–2010 period.

The legislation would redistribute the States under the jurisdiction of the Ninth Judicial Circuit among a modified Ninth Circuit and a new Twelfth Circuit. Based on information from the AOUSC, the discretionary expenditures associated with the new Twelfth Circuit would include severance pay for current staff unable to relocate, relocation expenses for some current staff and equipment, and additional staff and equipment that are necessary for responsibilities of each Judicial Circuit. CBO estimates that such additional staff and support for the new Twelfth Circuit would cost $6 million in fiscal year 2006 and $28 million over the 2006–2010 period.

CBO cannot estimate the cost of new office space for the new Twelfth Judicial Circuit, because the legislation does not specify where the new court would be located. According to the AOUSC, two possible locations would involve renovating and using an existing facility in Seattle, Washington, or constructing a new facility in Phoenix, Arizona. Depending on the location of the headquarters, and subject to appropriation of the necessary amounts, CBO estimates that the costs could range from about $20 million to over $80 million over the 2006–2010 period.

*Direct Spending*

By adding additional judgeships and extending certain judgeships, CBO estimates that enacting H.R. 4093 would increase direct spending by $4 million in 2006, and $17 million a year over

the 2007–2015 period. Spending would total $157 million over the 2006–2015 period.

The legislation would authorize 12 new circuit judgeships, 56 new district judgeships, and 25 new Bankruptcy judgeships. Those figures include both permanent and temporary judgeships. Based on information from AOUSC about the cost of benefits for judges, and using the current law salaries of judges, CBO estimates that the mandatory costs of those judgeships would be $72 million over the 2006–2010 period and $157 million over the 2006–2015 period. That estimate does not include any cost for a provision that would convert 17 bankruptcy judgeships from temporary to permanent status. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8) created those temporary judgeships with a term through 2015, thus converting them to permanent status would not affect Federal costs over the next 10 years.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

This legislation contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On October 28, 2005, CBO transmitted a cost estimate for the Reconciliation Recommendations of the House Committee on the Judiciary, as approved by the committee on October 27, 2005. Our cost estimates are identical with respect to the provisions that pertain to judgeships, the Twelfth Judicial Circuit, and the support of judges.

ESTIMATE PREPARED BY:

Federal Costs: Gregory Waring (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 4093 will authorize additional circuit, district, and bankruptcy judgeships and realign the current Ninth Circuit Court of Appeals by creating a new Ninth Circuit and a new Twelfth Circuit.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.*

Section 1 sets forth the short title of the bill as the "Federal Judgeship and Administrative Efficiency Act of 2005."

*Sec. 2. Table of Contents*

Section 2 sets forth the table of contents.

### TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

*Sec. 101. Short title.*

Section 101 sets forth the short title of Title I as the "Federal Judgeship Act of 2005."

*Sec. 102. Circuit judges for the circuit courts of appeals.*

Section 102 provides for the creation of nine permanent judgeships and three temporary judgeships for the United States Courts of Appeals. The creation of these judgeships reflects the recommendations of the Judicial Conference of the United States, which conducts a biennial review of the judgeship needs of all U.S. Courts of Appeals to determine if any of the courts require additional judges to appropriately administer civil and criminal justice in the Federal court system. This title reflects the recommendations presented to the Congress in March 2005.

Subsection 102(a) creates nine additional permanent judgeships for the U.S. Courts of Appeals. The allocation of these positions is as follows: one for the First Circuit Court of Appeals; two for the Second Circuit Court of Appeals; one for the Sixth Circuit Court of Appeals; and five for the Ninth Circuit Court of Appeals.

Subsection 102(b) creates three additional temporary judgeships for the U.S. Courts of Appeals. The allocation of these positions is as follows: one for the Eighth Circuit Court of Appeals; and two for the Ninth Circuit Court of Appeals.

Such additional judgeships are "temporary" in that, beginning 10 years after the temporary judgeship or judgeships on a given court of appeals are initially filled, a number of vacancies occurring on the court, equal to the number of positions authorized under this subsection, will not be filled so that the court will fall back to the number of authorized judgeships specified for that circuit in 28 U.S.C. § 44.

Subsection 102(c) amends the table contained in 28 U.S.C. § 44(a) to reflect the additional permanent appellate judgeships created by section 102(a).

*Sec. 103. District judges for the district courts.*

Section 103 provides for the creation of forty-four permanent judgeships and twelve (12) temporary judgeships for the United States District Courts. The creation of these judgeships reflects the recommendations of the Judicial Conference of the United States, which conducts a biennial review of the judgeship needs of all United States District Courts to determine if any of the courts require additional judges to appropriately administer civil and crimi-

nal justice in the Federal court system. This title reflects the recommendations presented to the Congress in March 2005.

Subsection 103(a) creates 44 additional permanent judgeships for the U.S. District Courts. The allocation of these positions is as follows: one for the Northern District of Alabama; four for the District of Arizona; four for the Central District of California; four for the Eastern District of California; three for the Northern District of California; one for the Southern District of California; one for the District of Colorado; four for the Middle District of Florida; three for the Southern District of Florida; one for the District of Idaho; one for the Northern District of Illinois; one for the Southern District of Indiana; one for the Western District of Missouri; one for the District of Nebraska; one for the District of Nevada; one for the District of New Mexico; three for the Eastern District of New York; one for the Western District of New York; one for the District of Oregon; one for the District of South Carolina; three for the Southern District of Texas; two for the Eastern District of Virginia; and one for the Western District of Washington.

Subsection 103(b) creates 12 additional temporary judgeships for the U.S. District Courts. The allocation is as follows: one for the Middle District of Alabama; one for the District of Arizona; one for the Northern District of California; one for the District of Colorado; one for the Middle District of Florida; one for the Northern District of Iowa; one for the District of Minnesota; one for the District of New Jersey; one for the District of New Mexico; one for the Southern District of Ohio; one for the District of Oregon; and one for the District of Utah.

Such additional judgeships are "temporary" in that, beginning 10 years after the temporary judgeship or judgeships on a given district court are initially filled, a number of vacancies occurring on the court, equal to the number of positions authorized under this subsection, will not be filled so that the court will fall back to the number of authorized judgeships specified for that district in 28 U.S.C. § 133.

Subsection 103(c)(1) converts to permanent status the following three temporary judgeships created by Pub. L. No. 101–650, the Judicial Improvements Act of 1990: one in the District of Hawaii; one in the District of Kansas; and one in the Eastern District of Missouri.

Subsection 103(c)(2) extends the existing judgeship for the Northern District of Ohio authorized by Pub. Law No. 101–650. The first vacancy in the office of district judge in this district occurring 20 years or more after the confirmation date of the judge named to fill the temporary judgeship created by Section 203(c) of Public Law 101–650 shall not be filled.

Subsection 103(d) amends the table contained in 28 U.S.C. § 133 to reflect the additional permanent district judgeships created by sections 103(a) and 103(c)(1).

*Sec. 104. Establishment of article III court in the Virgin Islands.*

Section 104 establishes an Art. III court in the United States Virgin Islands, in place of the current territorial court.

Subsection 104(a) adds 28 U.S.C. § 126A to include the Virgin Islands among the United States judicial districts.

Subsection 104(b) amends 28 U.S.C. § 133(a), which authorizes the number of judges in each district. The number of judges is maintained at its current level of two in the Virgin Islands.

Subsection 104(c) amends 28 U.S.C. § 152(a) to make clear that bankruptcy judges for the Virgin Islands will be appointed in the same manner as bankruptcy judges in other United States district courts. At this time, the bankruptcy caseload is not sufficient to justify creating bankruptcy judgeships in the Virgin Islands. The district court can handle the caseload with its other judicial resources.

Subsection 104(d) amends 28 U.S.C. § 333 by eliminating the references to judges of the territorial District Court of the Virgin Islands with respect to attendance at circuit judicial conferences. These references are unnecessary since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451.

Subsection 104(e) amends 28 U.S.C. § 373 by deleting references to the territorial District Court of the Virgin Islands in the provisions governing the territorial judges' retirement system. Judges of the new Art. III court will be included in the Art. III judges' retirement system provided in sections 371 and 372 of title 28.

Subsection 104(f) amends section 28 U.S.C. § 376, concerning annuities for judges' survivors, by deleting the references to judges of the territorial District Court of the Virgin Islands. Judges of the new Art. III court will be covered by section 376 by virtue of their positions as "judges of the United States" as defined in 28 U.S.C. § 451.

Subsection 104(g) amends section 28 U.S.C. § 526(a)(2) by eliminating the reference to the territorial District Court of the Virgin Islands in the context of the investigating authority of the Attorney General. This reference is unnecessary since the new Art. III court will be covered by that provision as a "court of the United States" as defined in 28 U.S.C. § 451.

Subsection 104(h) amends the definition of "courts" in 28 U.S.C. § 610 to delete the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 104(i) amends 28 U.S.C. § 631(a), authorizing appointment of United States magistrate judges by the territorial District Court of the Virgin Islands, since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451.

Subsection 104(j) amends 28 U.S.C. § 753(a), regarding court reporters, to delete the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 104(k) amends 28 U.S.C. § 1291, regarding final decisions of district courts, to delete the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 104(l) amends subsections (a) and (d)(4) of 28 U.S.C. § 1292, regarding interlocutory decisions, by deleting the references to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451.

An obsolete reference to the Canal Zone is also deleted from section 1292(a).

Subsection 104(m) amends 28 U.S.C. § 1295(a), regarding the jurisdiction of the United States Court of Appeals for the Federal Circuit, by deleting the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451. Obsolete references to the Canal Zone are also deleted.

Subsection 104(n) amends 28 U.S.C. § 1346(b), regarding the United States as defendant, by deleting the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court" as defined in 28 U.S.C. § 451. An obsolete reference to the Canal Zone is also deleted.

Subsection 104(o) amends 18 U.S.C. § 3006A(j), the Criminal Justice Act, to delete the reference to the territorial District Court of the Virgin Islands since the new Art. III court will be a "district court of the United States created by chapter 5 of title 28," within the meaning of section 3006A(j).

Subsection 104(p) ensures that the amendments made by this section do not affect the tenure in office of an incumbent judge of the District Court of the Virgin Islands, and do not affect the rights under the territorial judges' retirement system (28 U.S.C. § 373) and the Judicial Survivors' Annuities System (28 U.S.C. § 376) of any former judge who has retired, or will retire, before the effective date of this section. It also guarantees that judges who have accrued service under the territorial judges' retirement system will receive credit for the time served under the Art. III judges' retirement systems (28 U.S.C. §§ 371, 372) if they are reappointed as Art. III judges of their courts.

Subsection 104(q) makes conforming amendments to the judicial provisions of the Revised Organic Act of the Virgin Islands in order to reflect the creation of an Art. III court and the abolishment of the territorial District Court for the Virgin Islands. The territorial court's existing appellate jurisdiction over local court decisions is transferred to the Art. III court until a local appellate court is established by the Virgin Islands legislature. This legislation also retains the existing jurisdiction of the United States Court of Appeals for the Third Circuit over final decisions of the highest local court for fifteen years following establishment of a local appellate court.

Subsection 104(r) provides that any existing reference to the "District Court of the Virgin Islands" will be deemed to refer to the new Art. III court.

Subsection 104(s) provides that the amendments made by section 104 of this Act will take effect 90 days after the date of enactment of this Act and that cases pending on the effective date may be pursued to final determination in the Art. III court.

*Sec. 105. Effective date.*

The section provides that the provisions of Title I, with the exception of section 104, will take effect on the date of enactment of the Act.

TITLE II—BANKRUPTCY JUDGESHIPS

*Sec. 201. Short title.*

Section 201 sets forth the short title of Title II as the "Enhanced Bankruptcy Judgeship Act of 2005."

*Sec. 202. Authorization for additional bankruptcy judgeships.*

Section 202 would authorize the creation of sixteen additional permanent bankruptcy judgeships in 12 judicial districts. This section reflects the recommendations of the Judicial Conference of the United States, which has the duty under 28 U.S.C. § 152(b)(2) to make recommendations to Congress regarding the authorization of additional bankruptcy judgeships. The most recent Conference recommendation for 47 additional bankruptcy judgeships was transmitted to Congress in February 2005.

Section 1223 of Pub. L. No. 109–8, enacted in April 2005, authorized only 28 additional bankruptcy judgeships based upon a superceded Conference recommendation, leaving authorization of 24 of the additional judgeships recommended in 2005 pending. The 16 permanent judgeships that this section would authorize are justified by those districts' workload, and continue to be necessary for the districts involved to manage their caseloads. The allocation of these new judgeships is as follows: three for the eastern district of Michigan; two for the middle district of Florida; two for the northern district of Georgia; one for the southern district of New York; one for the western district of Pennsylvania; one for the district of Maryland; one for the eastern district of Texas; one for the eastern district of Kentucky; one for the western district of Tennessee; one for the eastern district of Arkansas; one for the western districts of Arkansas; one for the district of Utah, and one for the southern district of Georgia.

The Judicial Conference's 2005 recommendation comprised a combination of temporary and permanent judgeships based upon each district's caseload and circumstances. For two districts, the Conference recommended a combination of judgeships. The Conference recommended that the middle district of Florida and the district of Maryland receive two permanent and two temporary judgeships each. Although the district of Maryland received three temporary judgeships under section 1223 of Pub. L. No. 109–8, the additional permanent judgeship that would be authorized by section 2 of this bill is recommended by the Judicial Conference of the United States, and continues to be necessary for the administration of the bankruptcy system in the district of Maryland. Combined with the conversion of one temporary judgeship in the district of Maryland pursuant to section 4 of this bill, the district of Maryland would be authorized 2 permanent and 2 temporary additional bankruptcy judgeships, as recommended by the Conference in 2005.

*Sec. 203. Temporary bankruptcy judgeships.*

Section 203 would authorize the creation of eight additional temporary bankruptcy judgeships in seven judicial districts, as follows: two for the middle district of Florida; one for the western district of North Carolina; one for the northern district of Mississippi; one for the southern district of Ohio; one for the northern district of In-

diana; one for the district of Nevada; and one for the northern district of Florida.

These additional temporary bankruptcy judgeships were not enacted as part of section 1223 of Pub. L. No. 109–8 because that section of the recently enacted bankruptcy act was based upon a superceded Judicial Conference recommendation, and did not reflect the Judicial Conference's most recent recommendation. These additional judgeships are necessary for the administration of the bankruptcy system in the enumerated districts.

*Sec. 204. Conversion of existing temporary bankruptcy judgeships.*

Subsection 204(a) of this bill would convert the existing temporary bankruptcy judgeships in the district of Delaware, the district of Puerto Rico, and the southern district of Illinois (authorized by Pub. L. No. 102–361, as amended by Pub. L. No. 104–317, title III, § 307 (28 U.S.C. § 152 note)) to permanent bankruptcy judgeships under 28 U.S.C. § 152(a)(2). Conversion of these three temporary bankruptcy judgeships was recommended to Congress by the Judicial Conference in February 2005. Section 1223 of Pub. L. No. 109–8 only extends the date after which the next vacancy in the district of Puerto Rico and the district of Delaware would not be filled. The Judicial Conference's evaluation of these districts resulted in the 2005 recommendation that conversion of these three temporary judgeships, not mere extension of the lapse date, is necessary for these districts to have adequate judicial resources both at present and in the future.

Subsection 204(b) of this bill would convert the existing temporary bankruptcy judgeships authorized by section 1223 of Pub. L. No. 109–8 to permanent bankruptcy judgeships under 28 U.S.C. § 152(a)(2), in the following districts: the northern district of New York, the southern district of New York, the eastern district of Pennsylvania, the district of Delaware, the district of New Jersey, the district of Maryland, the eastern district of North Carolina, the eastern district of Michigan, the western district of Tennessee, and the southern district of Georgia.

In its February 2005 recommendation to Congress, the Judicial Conference of the United States specifically recommended that these judgeships be created as permanent based upon these districts' case filings, workloads, and unique circumstances. However, section 1223 of Pub. L. No. 109–8 created these judgeships as only temporary. This means that at any point in time 5 years from the date each of these new judgeships is filled, each of these districts will permanently lose the new judgeship(s) and will be reduced to the judgeship resource levels that have existed since at least 1999. Based on the workload and case filings of the districts that are the subject of this section of the bill, the Conference specifically recommended that these additional judgeships be authorized as permanent to continuously provide these districts with the necessary judicial resources now and in the future. Therefore, this section would convert these judgeships to permanent to effect that goal.

*Sec. 205. General provisions.*

Section 205(a) would make technical amendments to 28 U.S.C. § 152(a)(2), to reflect the additional permanent bankruptcy judgeships created by this bill, by both new authorization and conversion

of temporary judgeships. Section 205(b) provides that it is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

*Sec. 206. Effective date.*

Section 206 provides that Title II and the amendments to current law contained therein will take effect on the date of the enactment of this Act.

TITLE III—NINTH CIRCUIT REORGANIZATION

*Sec. 301. Short title.*

Section 301 sets forth the short title for Title III as the "Judicial Administration and Improvements Act of 2005."

*Sec. 302. Definitions.*

Section 302 sets forth the definitions for Title III. For the purposes of this title, the term "Former Ninth Circuit" means the ninth judicial circuit of the United States as it exists on the day before the effective date of this title. The term "New Ninth Circuit" means the ninth judicial circuit as established in section 303(2)(A) of this bill, which includes California, Guam, Hawaii, and the Northern Mariana Islands. The term "Twelfth Circuit" means the twelfth judicial circuit as established in section 303(2)(B) of the bill, which includes Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

*Sec. 303. Number and composition of circuits.*

Section 303 amends the table contained in 28 U.S.C. § 41 to provide for one additional circuit court of appeals and reallocates the jurisdiction of the current Ninth Circuit Court of Appeals between the New Ninth Circuit and the newly formed Twelfth Circuit Court of Appeals. The Ninth Circuit Court of Appeals would consist of California, Guam, Hawaii, and the Northern Mariana Islands. The Twelfth Circuit Court of Appeals would consist of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

*Sec. 304. Number of circuit judges.*

Section 304 amends the table contained in 28 U.S.C. § 44(a) to reflect the number of circuit court judges for the Ninth and Twelfth Circuit Court of Appeals. The New Ninth Circuit would have 19 circuit court judges; the Twelfth Circuit would have 14 circuit court judges.

*Sec. 305. Places of circuit court.*

Section 305 amends 28 U.S.C. § 48(a) to set forth the places where the New Ninth Circuit and the Twelfth Circuit will hold regular sessions. The New Ninth Circuit will hold regular sessions in Honolulu, Hawaii; Pasadena, California; and San Francisco, California. The Twelfth Circuit will hold regular sessions in Las Vegas, Nevada; Missoula, Montana; Phoenix, Arizona; Portland, Oregon; and Seattle, Washington.

*Sec. 306. Assignment of circuit judges.*

Section 306 provides that the circuit judges that are in regular active service and whose official duty station on the day before the effective date of this title in California, Guam, Hawaii, or the Northern Mariana Islands will become circuit judges of the New Ninth Circuit. Section 306 also provides that the circuit judges that are in regular active service and whose official duty station on the day before the effective date of this title in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington will become circuit judges of the Twelfth Circuit.

*Sec. 307. Election of assignment by senior judges.*

Section 307 provides that senior judges of the Former Ninth Circuit can elect to be assigned to either the New Ninth Circuit or the Twelfth Circuit.

*Sec. 308. Seniority of judges.*

Section 308 provides that the seniority of the judges of the New Ninth Circuit and the Twelfth Circuit shall run from the date of commission of the judge in the Former Ninth Circuit.

*Sec. 309. Application to cases.*

Section 309 provides for the disposition of cases of the Former Ninth Circuit after realignment. Cases submitted for decision prior to the effective date of this title will proceed as if the title had not been enacted, with the exception that a petition for a rehearing *en banc* that is pending on or after the effective date of this title will be heard by the circuit court of appeal that would have had jurisdiction if this title had been in effect at the time of filing the appeal. For cases that have not been submitted for decision prior to the effective date of this title, the appeal or proceeding, together with the original papers, records, and record entries, will be transferred to the circuit court of appeal that would have had jurisdiction if this title had been in effect at the time of the appeal.

*Sec. 310. Temporary assignment of circuit judges among circuits.*

Section 310 amends 28 U.S.C. § 291 to allow the Chief Judge of either the New Ninth Circuit or the Twelfth Circuit to designate and temporarily assign any circuit court judge to the other circuit of the Former Ninth Circuit if the chief judge of the other circuit requests such assistance and it serves the public interest.

*Sec. 311. Temporary assignment of district judges among circuits.*

Section 311 amends 28 U.S.C. § 292 to allow the Chief Judge of the New Ninth Circuit to designate and assign any district court judge to sit on the Twelfth Circuit, or a division thereof, if the Chief Judge of the Twelfth Circuit requests such assistance and it serves the public interest. The section allows the Chief Judge of the New Ninth Circuit to designate and temporarily assign a district court judge to hold a district court in any district of the Twelfth Circuit if it serves the public interest. Section 311 gives identical powers to the Chief Judge of the Twelfth Circuit. Section 311 further provides that any such designations or assignments shall be made in accordance with the rules of the court of appeals or district court to which the judge has been designated or assigned.

*Sec. 312. Administration.*

Section 312 provides that the Former Ninth Circuit can take such administrative action as is required to carry out this title and amendments thereto. Section 312 provides further that the Former Ninth Circuit shall cease to exist for administrative purposes 2 years after the date of enactment of this Act.

*Sec. 313. Effective date.*

Section 313 provides that Title III shall take effect no later than December 31, 2006.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

*Sec. 401. Authorization of appropriations.*

Section 401 authorizes such funds as may be necessary to carry out this Act for FY 2006–2009, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## SECTION 203 OF THE JUDICIAL IMPROVEMENTS ACT OF 1990

**SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.**

(a) * * *

* * * * * * *

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) * * *

* * * * * * *

Except with respect to the western district of Michigan, the eastern district of Pennsylvania, and the northern district of Ohio, the first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1995, shall not be filled. The first vacancy in the office of district judge in the eastern district of Pennsylvania, occurring 5 years or more after the confirmation date of the judge named to fill the temporary judgeship created for such district under this subsection, shall not be filled. The first vacancy in the office of district judge in the northern district of Ohio occurring [15 years] *20 years* or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. For districts named in this subsection for which multiple judgeships are created by this Act, the last of

those judgeships filled shall be the judgeships created under this section.

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## TITLE 28, UNITED STATES CODE

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# PART I—ORGANIZATION OF COURTS

* * * * * * *

## CHAPTER 3—COURTS OF APPEALS

* * * * * * *

### § 41. Number and composition of circuits

The [thirteen] *fourteen* judicial circuits of the United States are constituted as follows:

| Circuits | Composition |
|---|---|
| District of Columbia | District of Columbia. |
| First | Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island. |
| Second | Connecticut, New York, Vermont. |
| Third | Delaware, New Jersey, Pennsylvania, Virgin Islands. |
| Fourth | Maryland, North Carolina, South Carolina, Virginia, West Virginia. |
| Fifth | District of the Canal Zone, Louisiana, Mississippi, Texas. |
| Sixth | Kentucky, Michigan, Ohio, Tennessee. |
| Seventh | Illinois, Indiana, Wisconsin. |
| Eighth | Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota. |
| [Ninth | Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.] |
| *Ninth* | *California, Guam, Hawaii, Northern Mariana Islands.* |
| Tenth | Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming. |
| Eleventh | Alabama, Florida, Georgia. |
| *Twelfth* | *Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.* |
| Federal | All Federal judicial districts. |

* * * * * * *

### § 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

| [Circuits | Number of Judges |
|---|---|
| District of Columbia | 12 |
| First | 6 |
| Second | 13 |
| Third | 14 |
| Fourth | 15 |

| | |
|---|---|
| Fifth | 17 |
| Sixth | 16 |
| Seventh | 11 |
| Eighth | 11 |
| Ninth | 28 |
| Tenth | 12 |
| Eleventh | 12 |
| Federal | 12] |

| ***Circuits*** | ***Number of Judges*** |
|---|---|
| *District of Columbia* | *12* |
| *First* | *7* |
| *Second* | *15* |
| *Third* | *14* |
| *Fourth* | *15* |
| *Fifth* | *17* |
| *Sixth* | *17* |
| *Seventh* | *11* |
| *Eighth* | *11* |
| *Ninth* | *19* |
| *Tenth* | *12* |
| *Eleventh* | *12* |
| *Twelfth* | *14* |
| *Federal* | *12.* |

* * * * * * *

## § 48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

| *Circuits* | *Places* |
|---|---|
| District of Columbia | Washington. |
| First | Boston. |
| Second | New York. |
| Third | Philadelphia. |
| Fourth | Richmond, Asheville. |
| Fifth | New Orleans, Fort Worth, Jackson. |
| Sixth | Cincinnati. |
| Seventh | Chicago. |
| Eighth | St. Louis, Kansas City, Omaha, St. Paul. |

| *Circuits* | *Places* |
|---|---|
| [Ninth | San Francisco, Los Angeles, Portland, Seattle.] |
| *Ninth* | *Honolulu, Pasadena, San Francisco.* |
| Tenth | Denver, Wichita, Oklahoma City. |
| Eleventh | Atlanta, Jacksonville, Montgomery. |
| *Twelfth* | *Las Vegas, Missoula, Phoenix, Portland, Seattle.* |
| Federal | District of Columbia, and in any other place listed above as the court by rule directs. |

* * * * * * *

## CHAPTER 5—DISTRICT COURTS

Sec. 81. Alabama.

* * * * * * *

*126A. Virgin Islands.*

* * * * * * *

### *§ 126A. Virgin Islands*

*The Virgin Islands constitutes 1 judicial district comprising 2 divisions.*

*(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.*

*Court for the Saint Croix Division shall be held at Christiansted.*

*(2) The Saint Thomas and Saint John Division comprises the islands of Saint Thomas and Saint John and adjacent islands and cays.*

*Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.*

* * * * * * *

### § 133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

| [Districts | Judges |
|---|---|
| Alabama: | |
| Northern | 7 |
| Middle | 3 |
| Southern | 3 |
| Alaska | 3 |
| Arizona | 12 |
| Arkansas: | |
| Eastern | 5 |
| Western | 3 |
| California: | |
| Northern | 14 |
| Eastern | 6 |
| Central | 27 |
| Southern | 13 |
| Colorado | 7 |
| Connecticut | 8 |
| Delaware | 4 |
| District of Columbia | 15 |

| | |
|---|---|
| Florida: | |
| Northern | 4 |
| Middle | 15 |
| Southern | 17 |
| Georgia: | |
| Northern | 11 |
| Middle | 4 |
| Southern | 3 |
| Hawaii | 3 |
| Idaho | 2 |
| Illinois: | |
| Northern | 22 |
| Central | 4 |
| Southern | 4 |
| Indiana: | |
| Northern | 5 |
| Southern | 5 |
| Iowa: | |
| Northern | 2 |
| Southern | 3 |
| Kansas | 5 |
| Kentucky: | |
| Eastern | 5 |
| Western | 4 |
| Eastern and Western | 1 |
| Lousiana: | |
| Eastern | 12 |
| Middle | 3 |
| Western | 7 |
| Maine | 3 |
| Maryland | 10 |
| Massachusetts | 13 |
| Michigan: | |
| Eastern | 15 |
| Western | 4 |
| Minnesota | 7 |
| Mississippi: | |
| Northern | 3 |
| Southern | 6 |
| Missouri: | |
| Eastern | 6 |
| Western | 5 |
| Eastern and Western | 2 |
| Montana | 3 |
| Nebraska | 3 |
| Nevada | 7 |
| New Hampshire | 3 |
| New Jersey | 17 |
| New Nexico | 6 |
| New York: | |
| Northern | 5 |
| Southern | 28 |
| Eastern | 15 |
| Western | 4 |
| North Carolina: | |
| Eastern | 4 |
| Middle | 4 |
| Western | 4 |
| North Dakota | 2 |
| Ohio: | |
| Northern | 11 |
| Southern | 8 |
| Oklahoma: | |
| Northern | 3 |
| Southern | 1 |
| Western | 6 |
| Northern, Eastern, and Western | 1 |
| Oregon | 6 |

| | |
|---|---|
| Pennsylvania: | |
| Eastern | 22 |
| Middle | 6 |
| Western | 10 |
| Puerto Rico | 7 |
| Rhode Island | 3 |
| South Carolina | 10 |
| South Dakota | 3 |
| Tennessee: | |
| Eastern | 5 |
| Middle | 4 |
| Western | 5 |
| Texas: | |
| Northern | 12 |
| Southern | 19 |
| Eastern | 7 |
| Western | 13 |
| Utah | 5 |
| Vermont | 2 |
| Virginia: | |
| Eastern | 11 |
| Western | 4 |
| Washington: | |
| Eastern | 4 |
| Western | 7 |
| West Virginia: | |
| Northern | 3 |
| Southern | 5 |
| Wisconsin: | |
| Eastern | 5 |
| Western | 2 |
| Wyoming | 3.] |

| ***Districts*** | ***Judges*** |
|---|---|
| *Alabama:* | |
| *Northern* | *8* |
| *Middle* | *3* |
| *Southern* | *3* |
| *Alaska* | *3* |
| *Arizona* | *16* |
| *Arkansas:* | |
| *Eastern* | *5* |
| *Western* | *3* |
| *California:* | |
| *Northern* | *17* |
| *Eastern* | *10* |
| *Central* | *31* |
| *Southern* | *14* |
| *Colorado* | *8* |
| *Connecticut* | *8* |
| *Delaware* | *4* |
| *District of Columbia* | *15* |
| *Florida:* | |
| *Northern* | *4* |
| *Middle* | *19* |
| *Southern* | *20* |
| *Georgia:* | |
| *Northern* | *11* |
| *Middle* | *4* |
| *Southern* | *3* |
| *Hawaii* | *4* |
| *Idaho* | *3* |
| *Illinois:* | |
| *Northern* | *23* |
| *Central* | *4* |
| *Southern* | *4* |
| *Indiana:* | |
| *Northern* | *5* |
| *Southern* | *6* |

| | |
|---|---|
| *Iowa:* | |
| *Northern* | *2* |
| *Southern* | *3* |
| *Kansas* | *6* |
| *Kentucky:* | |
| *Eastern* | *5* |
| *Western* | *4* |
| *Eastern and Western* | *1* |
| *Louisiana:* | |
| *Eastern* | *12* |
| *Middle* | *3* |
| *Western* | *7* |
| *Maine* | *3* |
| *Maryland* | *10* |
| *Massachusetts* | *13* |
| *Michigan:* | |
| *Eastern* | *15* |
| *Western* | *4* |
| *Minnesota* | *7* |
| *Mississippi:* | |
| *Northern* | *3* |
| *Southern* | *6* |
| *Missouri:* | |
| *Eastern* | *7* |
| *Western* | *6* |
| *Eastern and Western* | *2* |
| *Montana* | *3* |
| *Nebraska* | *4* |
| *Nevada* | *8* |
| *New Hampshire* | *3* |
| *New Jersey* | *17* |
| *New Mexico* | *7* |
| *New York:* | |
| *Northern* | *5* |
| *Southern* | *28* |
| *Eastern* | *18* |
| *Western* | *5* |
| *North Carolina:* | |
| *Eastern* | *4* |
| *Middle* | *4* |
| *Western* | *4* |
| *North Dakota* | *2* |
| *Ohio:* | |
| *Northern* | *11* |
| *Southern* | *8* |
| *Oklahoma:* | |
| *Northern* | *3* |
| *Eastern* | *1* |
| *Western* | *6* |
| *Northern, Eastern, and Western* | *1* |
| *Oregon* | *7* |
| *Pennsylvania:* | |
| *Eastern* | *22* |
| *Middle* | *6* |
| *Western* | *10* |
| *Puerto Rico* | *7* |
| *Rhode Island* | *3* |
| *South Carolina* | *11* |
| *South Dakota* | *3* |
| *Tennessee:* | |
| *Eastern* | *5* |
| *Middle* | *4* |
| *Western* | *5* |
| *Texas:* | |
| *Northern* | *12* |
| *Southern* | *22* |
| *Eastern* | *7* |
| *Western* | *13* |
| *Utah* | *5* |

| | |
|---|---|
| *Vermont* | *2* |
| *Virgin Islands* | *2* |
| *Virginia:* | |
| *Eastern* | *13* |
| *Western* | *4* |
| *Washington:* | |
| *Eastern* | *4* |
| *Western* | *8* |
| *West Virginia:* | |
| *Northern* | *3* |
| *Southern* | *5* |
| *Wisconsin:* | |
| *Eastern* | *5* |
| *Western* | *2* |
| *Wyoming* | *3.* |

* * * * * * *

## CHAPTER 6—BANKRUPTCY JUDGES

* * * * * * *

### § 152. Appointment of bankruptcy judges

(a)(1) * * *

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

| **[Districts** | **Judges** |
|---|---|
| Alabama: | |
| Northern | 5 |
| Middle | 2 |
| Southern | 2 |
| Alaska | 2 |
| Arizona | 7 |
| Arkansas: | |
| Eastern and Western | 3 |
| California: | |
| Northern | 9 |
| Eastern | 6 |
| Central | 21 |
| Southern | 4 |
| Colorado | 5 |
| Connecticut | 3 |
| Delaware | 1 |
| District of Columbia | 1 |
| Florida: | |
| Northern | 1 |
| Middle | 8 |
| Southern | 5 |
| Georgia: | |
| Northern | 8 |
| Middle | 3 |
| Southern | 2 |
| Hawaii | 1 |
| Idaho | 2 |
| Illinois: | |
| Northern | 10 |
| Central | 3 |
| Southern | 1 |
| Indiana: | |
| Northern | 3 |
| Southern | 4 |
| Iowa: | |
| Northern | 2 |
| Southern | 2 |
| Kansas | 4 |
| Kentucky: | |
| Eastern | 2 |

| | |
|---|---|
| Western | 3 |
| Louisiana: | |
| Eastern | 2 |
| Middle | 1 |
| Western | 3 |
| Maine | 2 |
| Maryland | 4 |
| Massachusetts | 5 |
| Michigan: | |
| Eastern | 4 |
| Western | 3 |
| Minnesota | 4 |
| Mississippi: | |
| Northern | 1 |
| Southern | 2 |
| Missouri: | |
| Eastern | 3 |
| Western | 3 |
| Montana | 1 |
| Nebraska | 2 |
| Nevada | 3 |
| New Hampshire | 1 |
| New Jersey | 8 |
| New Mexico | 2 |
| New York: | |
| Northern | 2 |
| Southern | 9 |
| Eastern | 6 |
| Western | 3 |
| North Carolina: | |
| Eastern | 2 |
| Middle | 2 |
| Western | 2 |
| North Dakota | 1 |
| Ohio: | |
| Northern | 8 |
| Southern | 7 |
| Oklahoma: | |
| Northern | 2 |
| Eastern | 1 |
| Western | 3 |
| Oregon | 5 |
| Pennsylvania: | |
| Eastern | 5 |
| Middle | 2 |
| Western | 4 |
| Puerto Rico | 2 |
| Rhode Island | 1 |
| South Carolina | 2 |
| South Dakota | 2 |
| Tennessee: | |
| Eastern | 3 |
| Middle | 3 |
| Western | 4 |
| Texas: | |
| Northern | 6 |
| Eastern | 2 |
| Southern | 6 |
| Western | 4 |
| Utah | 3 |
| Vermont | 1 |
| Virginia: | |
| Eastern | 5 |
| Western | 3 |
| Washington: | |
| Eastern | 2 |
| Western | 5 |
| West Virginia: | |
| Northern | 1 |

| | |
|---|---|
| Southern | 1 |
| Wisconsin: | |
| Eastern | 4 |
| Western | 2 |
| Wyoming | 1] |

| ***Districts*** | ***Judges*** |
|---|---|
| *Alabama:* | |
| *Northern* | *5* |
| *Middle* | *2* |
| *Southern* | *2* |
| *Alaska* | *2* |
| *Arizona* | *7* |
| *Arkansas:* | |
| *Eastern and Western* | *4* |
| *California:* | |
| *Northern* | *9* |
| *Eastern* | *7* |
| *Central* | *21* |
| *Southern* | *4* |
| *Colorado* | *5* |
| *Connecticut* | *3* |
| *Delaware* | *6* |
| *District of Columbia* | *1* |
| *Florida:* | |
| *Northern* | *1* |
| *Middle* | *10* |
| *Southern* | *5* |
| *Georgia:* | |
| *Northern* | *10* |
| *Middle* | *3* |
| *Southern* | *4* |
| *Hawaii* | *1* |
| *Idaho* | *2* |
| *Illinois:* | |
| *Northern* | *10* |
| *Central* | *3* |
| *Southern* | *2* |
| *Indiana:* | |
| *Northern* | *3* |
| *Southern* | *4* |
| *Iowa:* | |
| *Northern* | *2* |
| *Southern* | *2* |
| *Kansas* | *4* |
| *Kentucky:* | |
| *Eastern* | *3* |
| *Western* | *3* |
| *Louisiana:* | |
| *Eastern* | *2* |
| *Middle* | *1* |
| *Western* | *3* |
| *Maine* | *2* |
| *Maryland* | *6* |
| *Massachusetts* | *5* |
| *Michigan:* | |
| *Eastern* | *8* |
| *Western* | *3* |
| *Minnesota* | *4* |
| *Mississippi:* | |
| *Northern* | *1* |
| *Southern* | *2* |
| *Missouri:* | |
| *Eastern* | *3* |
| *Western* | *3* |
| *Montana* | *1* |
| *Nebraska* | *2* |
| *Nevada* | *3* |
| *New Hampshire* | *1* |
| *New Jersey* | *9* |

| | |
|---|---|
| *New Mexico* | *2* |
| *New York:* | |
| *Northern* | *3* |
| *Southern* | *11* |
| *Eastern* | *6* |
| *Western* | *3* |
| *North Carolina:* | |
| *Eastern* | *3* |
| *Middle* | *2* |
| *Western* | *2* |
| *North Dakota* | *1* |
| *Ohio:* | |
| *Northern* | *8* |
| *Southern* | *7* |
| *Oklahoma:* | |
| *Northern* | *2* |
| *Eastern* | *1* |
| *Western* | *3* |
| *Oregon* | *5* |
| *Pennsylvania:* | |
| *Eastern* | *6* |
| *Middle* | *2* |
| *Western* | *5* |
| *Puerto Rico* | *3* |
| *Rhode Island* | *1* |
| *South Carolina* | *3* |
| *South Dakota* | *2* |
| *Tennessee:* | |
| *Eastern* | *3* |
| *Middle* | *3* |
| *Western* | *6* |
| *Texas:* | |
| *Northern* | *6* |
| *Eastern* | *6* |
| *Southern* | *3* |
| *Western* | *4* |
| *Utah* | *4* |
| *Vermont* | *1* |
| *Virgin Islands* | *0* |
| *Virginia:* | |
| *Eastern* | *5* |
| *Western* | *3* |
| *Washington:* | |
| *Eastern* | *2* |
| *Western* | *5* |
| *West Virginia:* | |
| *Northern* | *1* |
| *Southern* | *1* |
| *Wisconsin:* | |
| *Eastern* | *4* |
| *Western* | *2* |
| *Wyoming* | *1.* |

* * * * * * *

## CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

* * * * * * *

### § 291. Circuit judges

(a) * * *

* * * * * * *

*(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate*

*and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.*

*(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.*

**§ 292. District judges**

(a) * * *

* * * * * * *

*(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may, in the public interest—*

*(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and*

*(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.*

*(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—*

*(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and*

*(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.*

*(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.*

* * * * * * *

## CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

* * * * * * *

**§ 333. Judicial conferences of circuits**

The chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the District Court of Guam**[**, the District Court of the Virgin Islands,**]** and the District Court of the Northern Mariana Islands may also be summoned biennially, and may be summoned annually, **[**to the conferences of their respective circuits**]** *to the conference of the ninth circuit*.

Every judge summoned may attend, and unless excused by the chief judge, shall remain throughout the conference.

The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.

* * * * * * *

## CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

* * * * * * *

### § 373. Judges in territories and possessions

(a) Any judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands* who retires from office after attaining the age and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

* * * * * * *

(e) Any judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islandsd] *the District Court of the Northern Mariana Islands* who is removed by the President of the United States upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

* * * * * * *

### § 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) "judicial official" means:

(A) * * *

(B) a judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands*;

* * * * * * *

(2) "retirement salary" means:

(A) * * *

(B) in the case of a judge of the District Court of Guam[, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands] *or the District Court of the Northern Mariana Islands*, (i) an annuity paid under subsection (a) of section *373*

of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

* * * * * * *

# PART II—DEPARTMENT OF JUSTICE

* * * * * * *

## CHAPTER 31—THE ATTORNEY GENERAL

* * * * * * *

### § 526. Authority of Attorney General to investigate United States attorneys, marshals, trustees, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of—

(1) * * *

(2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts [and of the district court of the Virgin Islands], probation officers, United States magistrate judges, and court reporters;

* * * * * * *

# PART III—COURT OFFICERS AND EMPLOYEES

* * * * * * *

## CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

* * * * * * *

### § 610. Courts defined

As used in this chapter the word "courts" includes the courts of appeals and district courts of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] the United States Court of Federal Claims, and the Court of International Trade.

* * * * * * *

## CHAPTER 43—UNITED STATES MAGISTRATE JUDGES

* * * * * * *

### § 631. Appointment and tenure

(a) The judges of each United States district court and the district courts of [the Virgin Islands, Guam,] *Guam* and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of [the Virgin Islands, Guam,] *Guam* or the Northern Mariana Is-

lands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate judge may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate judge in the adjoining district or districts.

* * * * * * *

## CHAPTER 49—DISTRICT COURTS

* * * * * * *

### § 753. Reporters

(a) Each district court of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* shall appoint one or more court reporters.

* * * * * * *

# PART IV—JURISDICTION AND VENUE

* * * * * * *

## CHAPTER 83—COURTS OF APPEALS

* * * * * * *

### § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

### § 1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States[, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,] *and the District Court of Guam,* or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunc-

tions, except where a direct review may be had in the Supreme Court;

* * * * * * *

(d)(1) * * *

* * * * * * *

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, [the District Court of the Virgin Islands,] or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

* * * * * * *

**§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit**

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from a final decision of a district court of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1338 of this title, except that a case involving a claim arising under any Act of Congress relating to copyrights, exclusive rights in mask works, or trademarks and no other claims under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title;

(2) of an appeal from a final decision of a district court of the United States, [the United States District Court for the District of the Canal Zone,] the District Court of Guam, [the District Court of the Virgin Islands,] or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

* * * * * * *

## CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

**§ 1346. United States as defendant**

(a) * * *

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts[, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,] shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal in-

jury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

* * * * * * *

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## SECTION 3006A OF TITLE 18, UNITED STATES CODE

### § 3006A. Adequate representation of defendants

(a) * * *

* * * * * * *

(j) DISTRICTS INCLUDED.—As used in this section, the term "district court" means each district court of the United States created by chapter 5 of title 28, [the District Court of the Virgin Islands,] the District Court for the Northern Mariana Islands, and the District Court of Guam.

* * * * * * *

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## REVISED ORGANIC ACT OF THE VIRGIN ISLANDS

* * * * * * *

BILL OF RIGHTS

SEC. 3. No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

* * * * * * *

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; *article III;* article IV, section 1 and section 2, clause 1; *article VI, clause 3;* the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth the nineteenth amendments: *Provided,* [That all offenses against the law of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22 (a) and (c) of this Act may be held by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or] *That all offenses against the laws of the Virgin Is-*

*lands which are prosecuted* in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.

* * * * * * *

[SEC. 21. The judicial power of the Virgin Islands shall be vested in a court of record designated the "District Court of the Virgin Islands" established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

[(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22 (a) and (c) of this Act.

[(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.

[SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act.

[(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: *Provided,* That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100, or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of

this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

[(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.]

***SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.***

*(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.*

*(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.*

***SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.***

*The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.*

* * * * * * *

SEC. 23A. (a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the [District Court of the Virgin Islands] *United States District Court for the District of the Virgin Islands* shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law to the extent now or hereafter prescribed by local law: *Provided*, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the con-

formity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

(b) Appeals to the [District Court of the Virgin Islands] *United States District Court for the District of the Virgin Islands* shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time [pursuant to section 24(a) of this Act: *Provided*, That no more than one of them may be a judge of a court established by local law.] *pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.* The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedures. Appeals pending in the district court on the effective date of this Act shall be heard and determined by a single judge.

* * * * * * *

[SEC. 24. (a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or a recalled senior judge of the District Court of the Virgin Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district

court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.

[(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18 and 28, United States Code, shall apply to the district court and appeals therefrom: *Provided*, That the terms 'Attorney for the government' and 'United States attorney' as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the income tax laws applicable to the Virgin Islands, mean the Attorney General of the Virgin Islands or such other person or persons as may be authorized by the laws of the Virgin Islands to act therein: *Provided further*, That in the district court all criminal prosecutions under the laws of the United States, under local law under section 22(c) of this Act, and under the income tax laws applicable to the Virgin Islands may be had by indictment by grand jury or by information: *Provided further*, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.

[(c) The Attorney General shall appoint a United States marshal for the Virgin Islands, to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.

[SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays.

[SEC. 26. All criminal cases originating in the district court shall be tried by jury upon demand by the defendant or by the Government. If no jury is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons.

[SEC. 27. The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of chapter 35 of title 28, United States Code, shall apply. Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the courts established by local law. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any

such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court or the courts established by local law.]

* * * * * * *

MARKUP TRANSCRIPT

# BUSINESS MEETING

**THURSDAY, OCTOBER 27, 2005**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:06 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (acting Chair of the Committee) presiding.

Mr. COBLE. I note the presence of a working quorum and we will come to order.

Before we start, I want to advise Members of the Committee that the Chairman's sister-in-law died as a result of an accident last night, and he will not be able to be here today. But we will proceed accordingly. I have been pressed into duty here, so we will do the best we can today, folks.

Pursuant to notice, I call up the bill H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005" for purposes of markup and move its favorable consideration to the House. Without objection, the bill will be considered as read and open for amendment at any point. The Chair recognizes himself to explain the bill.

[The bill, H.R. 4093, follows:]

I

109TH CONGRESS
1ST SESSION

# H. R. 4093

To provide for the appointment of additional Federal circuit and district judges, to improve the administration of justice, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2005

Mr. SENSENBRENNER (for himself and Mr. SIMPSON) introduced the following bill; which was referred to the Committee on the Judiciary

---

# A BILL

To provide for the appointment of additional Federal circuit and district judges, to improve the administration of justice, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Federal Judgeship and Administrative Efficiency Act of 2005''.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

Sec. 101. Short title.

Sec. 102. Circuit judges for the circuit courts of appeals.
Sec. 103. District judges for the district courts.
Sec. 104. Establishment of article III court in the Virgin Islands.
Sec. 105. Effective date.

TITLE II—BANKRUPTCY JUDGESHIPS

Sec. 201. Short title.
Sec. 202. Authorization for additional bankruptcy judgeships.
Sec. 203. Temporary bankruptcy judgeships.
Sec. 204. Conversion of existing temporary bankruptcy judgeships.
Sec. 205. General provisions.
Sec. 206. Effective date.

TITLE III—NINTH CIRCUIT REORGANIZATION

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Number and composition of circuits.
Sec. 304. Judgeships.
Sec. 305. Number of circuit judges.
Sec. 306. Places of circuit court.
Sec. 307. Assignment of circuit judges.
Sec. 308. Election of assignment by senior judges.
Sec. 309. Seniority of judges.
Sec. 310. Application to cases.
Sec. 311. Temporary assignment of circuit judges among circuits.
Sec. 312. Temporary assignment of district judges among circuits.
Sec. 313. Administration.
Sec. 314. Effective date.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

# TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

**SEC. 101. SHORT TITLE.**

This title may be cited as the ''Federal Judgeship Act of 2005''.

**SEC. 102. CIRCUIT JUDGES FOR THE CIRCUIT COURTS OF APPEALS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional circuit judge for the first circuit court of appeals;

(2) 2 additional circuit judges for the second circuit court of appeals; and

(3) 1 additional circuit judge for the sixth circuit court of appeals.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate 1 additional circuit judge for the eighth circuit court of appeals.

(2) VACANCY NOT FILLED.—The first vacancy in the office of circuit judge in the eighth circuit court of appeals occurring 10 years or more after the confirmation date of the judge named to fill the circuit judgeship created in that circuit by paragraph (1) shall not be filled.

(c) TABLES.—In order that the table contained in section 44 of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized under subsection (a) of this section, such table is amended to read as follows:

| **"Circuits** | **Number of Judges** |
|---|---|
| District of Columbia | 12 |
| First | 7 |
| Second | 15 |

| | |
|---|---|
| Third | 14 |
| Fourth | 15 |
| Fifth | 17 |
| Sixth | 17 |
| Seventh | 11 |
| Eighth | 11 |
| Ninth | 28 |
| Tenth | 12 |
| Eleventh | 12 |
| Federal | 12.”. |

**SEC. 103. DISTRICT JUDGES FOR THE DISTRICT COURTS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 4 additional district judges for the district of Arizona;

(3) 3 additional district judges for the northern district of California;

(4) 4 additional district judges for the eastern district of California;

(5) 4 additional district judges for the central district of California;

(6) 1 additional district judge for the southern district of California;

(7) 1 additional district judge for the district of Colorado;

(8) 4 additional district judges for the middle district of Florida;

(9) 3 additional district judges for the southern district of Florida;

(10) 1 additional district judge for the district of Idaho;

(11) 1 additional district judge for the northern district of Illinois;

(12) 1 additional district judge for the southern district of Indiana;

(13) 1 additional district judge for the western district of Missouri;

(14) 1 additional district judge for the district of Nebraska;

(15) 1 additional district judge for the district of Nevada;

(16) 1 additional district judge for the district of New Mexico;

(17) 3 additional district judges for the eastern district of New York;

(18) 1 additional district judge for the western district of New York;

(19) 1 additional district judge for the district of Oregon;

(20) 1 additional district judge for the district of South Carolina;

(21) 3 additional district judges for the southern district of Texas;

(22) 2 additional district judges for the eastern district of Virginia; and

(23) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the middle district of Alabama;

(B) 1 additional district judge for the district of Arizona;

(C) 1 additional district judge for the northern district of California;

(D) 1 additional district judge for the district of Colorado;

(E) 1 additional district judge for the middle district of Florida;

(F) 1 additional district judge for the northern district of Iowa;

(G) 1 additional district judge for the district of Minnesota;

(H) 1 additional district judge for the district of New Jersey;

(I) 1 additional district judge for the district of New Mexico;

(J) 1 additional district judge for the southern district of Ohio;

(K) 1 additional district judge for the district of Oregon; and

(L) 1 additional district judge for the district of Utah.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the judicial districts named in paragraph (1) occurring 10 years or more after the confirmation date of the judge named to fill the district judgeship created in that district by paragraph (1) shall not be filled.

(c) EXISTING JUDGESHIPS.—

(1) PERMANENT JUDGESHIPS.—The existing judgeships for the district of Hawaii, the district of Kansas, and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2) EXTENSION OF TEMPORARY JUDGESHIP.—Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) is amended in the fifth sentence (relating to the northern district of Ohio) by striking ''15 years'' and inserting ''20 years''.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized under subsections (a) and (c) of this section, such table is amended to read as follows:

| **''Districts** | **Judges** |
|---|---|
| ''Alabama: | |
| ''Northern | 8 |
| ''Middle | 3 |
| ''Southern | 3 |
| ''Alaska | 3 |
| ''Arizona | 16 |
| ''Arkansas: | |
| ''Eastern | 5 |
| ''Western | 3 |
| ''California: | |
| ''Northern | 17 |
| ''Eastern | 10 |
| ''Central | 31 |
| ''Southern | 14 |
| ''Colorado | 8 |
| ''Connecticut | 8 |
| ''Delaware | 4 |
| ''District of Columbia | 15 |
| ''Florida: | |
| ''Northern | 4 |
| ''Middle | 19 |
| ''Southern | 20 |
| ''Georgia: | |
| ''Northern | 11 |
| ''Middle | 4 |
| ''Southern | 3 |
| ''Hawaii | 4 |
| ''Idaho | 3 |

| | |
|---|---|
| "Illinois: | |
| "Northern | 23 |
| "Central | 4 |
| "Southern | 4 |
| "Indiana: | |
| "Northern | 5 |
| "Southern | 6 |
| "Iowa: | |
| "Northern | 2 |
| "Southern | 3 |
| "Kansas | 6 |
| "Kentucky: | |
| "Eastern | 5 |
| "Western | 4 |
| "Eastern and Western | 1 |
| "Louisiana: | |
| "Eastern | 12 |
| "Middle | 3 |
| "Western | 7 |
| "Maine | 3 |
| "Maryland | 10 |
| "Massachusetts | 13 |
| "Michigan: | |
| "Eastern | 15 |
| "Western | 4 |
| "Minnesota | 7 |
| "Mississippi: | |
| "Northern | 3 |
| "Southern | 6 |
| "Missouri: | |
| "Eastern | 7 |
| "Western | 6 |
| "Eastern and Western | 2 |
| "Montana | 3 |
| "Nebraska | 4 |
| "Nevada | 8 |
| "New Hampshire | 3 |
| "New Jersey | 17 |
| "New Mexico | 7 |
| "New York: | |
| "Northern | 5 |
| "Southern | 28 |
| "Eastern | 18 |
| "Western | 5 |
| "North Carolina: | |
| "Eastern | 4 |
| "Middle | 4 |
| "Western | 4 |
| "North Dakota | 2 |
| "Ohio: | |
| "Northern | 11 |
| "Southern | 8 |
| "Oklahoma: | |
| "Northern | 3 |
| "Eastern | 1 |

| | |
|---|---|
| "Western | 6 |
| "Northern, Eastern, and Western | 1 |
| "Oregon | 7 |
| "Pennsylvania: | |
| "Eastern | 22 |
| "Middle | 6 |
| "Western | 10 |
| "Puerto Rico | 7 |
| "Rhode Island | 3 |
| "South Carolina | 11 |
| "South Dakota | 3 |
| "Tennessee: | |
| "Eastern | 5 |
| "Middle | 4 |
| "Western | 5 |
| "Texas: | |
| "Northern | 12 |
| "Southern | 22 |
| "Eastern | 7 |
| "Western | 13 |
| "Utah | 5 |
| "Vermont | 2 |
| "Virginia: | |
| "Eastern | 13 |
| "Western | 4 |
| "Washington: | |
| "Eastern | 4 |
| "Western | 8 |
| "West Virginia: | |
| "Northern | 3 |
| "Southern | 5 |
| "Wisconsin: | |
| "Eastern | 5 |
| "Western | 2 |
| "Wyoming | 3". |

**SEC. 104. ESTABLISHMENT OF ARTICLE III COURT IN THE VIRGIN ISLANDS.**

(a) ESTABLISHMENT OF JUDICIAL DISTRICT.—

(1) VIRGIN ISLANDS.—Chapter 5 of title 28, United States Code, is amended by inserting after section 126 the following new section:

**"§ 126A. Virgin Islands**

"The Virgin Islands constitutes 1 judicial district comprising 2 divisions.

"(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.

"Court for the Saint Croix Division shall be held at Christiansted.

"(2) The Saint Thomas and Saint John Division comprises the Islands of Saint Thomas and Saint John and adjacent islands and cays.

"Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for chapter 5 of title 28, United States Code, is amended by inserting after the item relating to section 126 the following:

"126A. Virgin Islands.".

(b) NUMBER OF JUDGES.—The table contained in section 133(a) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 2".

(c) BANKRUPTCY JUDGES.—The table contained in section 152(a)(2) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 0".

(d) JUDICIAL CONFERENCES OF CIRCUITS.—Section 333 of title 28, United States Code, is amended in the third sentence of the first undesignated paragraph—

(1) by striking ", the District Court of the Virgin Islands,"; and

(2) by striking "to the conferences of their respective circuits" and inserting "to the conference of the ninth circuit".

(e) JUDGES IN TERRITORIES AND POSSESSIONS.—Section 373 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in subsection (e), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(f) ANNUITIES FOR SURVIVORS OF CERTAIN JUDICIAL OFFICIALS OF THE UNITED STATES.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (1)(B), by striking ", the District Court of the Northern Mariana Islands, or the

District Court of the Virgin Islands'' and inserting ''or the District Court of the Northern Mariana Islands''; and

(2) in paragraph (2)(B), by striking '', the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands'' and inserting ''or the District Court of the Northern Mariana Islands''.

(g) AUTHORITY OF ATTORNEY GENERAL.—Section 526(a)(2) of title 28, United States Code, is amended by striking ''and of the district court of the Virgin Islands''.

(h) COURTS DEFINED.—Section 610 of title 28, United States Code, is amended—

(1) by striking ''the United States District Court for the District of the Canal Zone,''; and

(2) by striking ''the District Court of the Virgin Islands,''.

(i) UNITED STATES MAGISTRATE JUDGES.—Section 631(a) of title 28, United States Code, is amended—

(1) in the first sentence, by striking ''the Virgin Islands, Guam,'' and inserting ''Guam''; and

(2) in the second sentence, by striking ''the Virgin Islands, Guam,'' and inserting ''Guam''.

(j) COURT REPORTERS.—Section 753(a) of title 28, United States Code, is amended by striking '', the United

States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands'' and inserting ''and the District Court of Guam''.

(k) FINAL DECISIONS OF DISTRICT COURTS.—Section 1291 of title 28, United States Code, is amended by striking '', the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,'' and inserting ''and the District Court of Guam,''.

(l) INTERLOCUTORY DECISIONS.—Section 1292 of title 28, United States Code, is amended—

(1) in subsection (a), by striking '', the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,'' and inserting ''and the District Court of Guam,''; and

(2) in subsection (d)(4)(A), by striking ''the District Court of the Virgin Islands,''.

(m) JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 1295(a) of title 28, United States Code, is amended in paragraphs (1) and (2)—

(1) by striking ''the United States District Court for the District of the Canal Zone,''; and

(2) by striking ''the District Court of the Virgin Islands,''.

(n) UNITED STATES AS DEFENDANT.—Section 1346(b)(1) of title 28, United States Code, is amended by striking '', together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,''.

(o) ADEQUATE REPRESENTATION OF DEFENDANTS.—Section 3006A(j) of title 18, United States Code, is amended by striking ''the District Court of the Virgin Islands,''.

(p) SAVINGS PROVISIONS.—

(1) TENURE OF INCUMBENT JUDGES.—A judge of the District Court of the Virgin Islands in office on the effective date of this section shall continue in office until the expiration of the term for which the judge was appointed, or until the judge dies, resigns, or is removed from office, whichever occurs first. When a vacancy occurs on the court on or after the effective date of this section, the President, in accordance with section 133(a) of title 28, United States Code, shall appoint, by and with the advice and consent of the Senate, a district judge for the District of the Virgin Islands.

(2) RETIREMENT RIGHTS AND BENEFITS.—The amendments made by this section shall not affect the rights under sections 373 and 376 of title 28, United States Code, of any judge of the District Court of the Virgin Islands who retires on or before the effective date of this section or who continues in office after that date under paragraph (1) of this subsection. Service as a judge of the District Court of the Virgin Islands appointed under section 24 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614) shall be included in calculating service under sections 371 and 372 of title 28, United States Code, and shall not be counted for purposes of section 373 of that title, if the judge is reappointed, after the effective date of this section, under section 133(a) of title 28, United States Code, as district judge for the District of the Virgin Islands.

(q) AMENDMENTS TO REVISED ORGANIC ACT OF THE VIRGIN ISLANDS.—

(1) REPEALS.—Sections 24, 25, 26, and 27 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614, 1615, 1616 and 1617) are repealed.

(2) RIGHTS AND PROHIBITIONS.—Section 3 of the Revised Organic Act of the Virgin Islands (48

U.S.C. 1561) is amended in the 23d undesignated paragraph—

(A) by inserting ''article III;'' after ''section 9, clauses 2 and 3;'' and

(B) by striking ''That all offenses against the laws of the United States'' and all that follows through ''section 22(b) of this Act or'' and inserting ''That all offenses against the laws of the Virgin Islands which are prosecuted''.

(3) JURISDICTION.—Section 21 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1611) is amended to read as follows:

**''SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.**

''(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

''(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and

duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.''.

(4) INCOME TAX MATTERS.—Section 22 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1612) is amended to read as follows:

**''SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.**

''The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.''.

(5) APPELLATE JURISDICTION.—Section 23A of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1613a) is amended—

(A) by striking ''District Court of the Virgin Islands'' each place it appears and inserting ''United States District Court for the District of the Virgin Islands''; and

(B) in subsection (b), by striking ''pursuant to section 24(a) of this Act: *Provided,* That no more than one of them may be a judge of a court established by local law.'' and inserting ''pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.''.

(r) ADDITIONAL REFERENCES.—Any reference in any provision of law to the ''District Court of the Virgin Islands'' shall, on and after the effective date of this sec-

tion, be deemed to be a reference to the United States District Court for the District of the Virgin Islands.

(s) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. Any complaint or proceeding pending in the District Court of the Virgin Islands on the effective date of this section may be pursued to final determination in the United States District Court for the District of the Virgin Islands, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Federal Circuit, and the Supreme Court of the United States.

**SEC. 105. EFFECTIVE DATE.**

Except as provided in section 104(s), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE II—BANKRUPTCY JUDGESHIPS

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Enhanced Bankruptcy Judgeship Act of 2005''.

**SEC. 202. AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.**

The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) 1 additional bankruptcy judgeship for the eastern district of California.

(3) 2 additional bankruptcy judgeships for the middle district of Florida.

(4) 2 additional bankruptcy judgeships for the northern district of Georgia.

(5) 1 additional bankruptcy judgeship for the southern district of Georgia.

(6) 1 additional bankruptcy judgeship for the eastern district of Kentucky.

(7) 1 additional bankruptcy judgeship for the district of Maryland.

(8) 3 additional bankruptcy judgeships for the eastern district of Michigan.

(9) 1 additional bankruptcy judgeship for the southern district of New York.

(10) 1 additional bankruptcy judgeship for the western district of Pennsylvania.

(11) 1 additional bankruptcy judgeship for the western district of Tennessee.

(12) 1 additional bankruptcy judgeship for the eastern district of Texas.

(13) 1 additional bankruptcy judgeship for the district of Utah.

**SEC. 203. TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the northern district of Florida.

(2) 2 additional bankruptcy judgeships for the middle district of Florida.

(3) 1 additional bankruptcy judgeship for the northern district of Indiana.

(4) 1 additional bankruptcy judgeship for the northern district of Mississippi.

(5) 1 additional bankruptcy judgeship for the district of Nevada.

(6) 1 additional bankruptcy judgeship for the western district of North Carolina.

(7) 1 additional bankruptcy judgeship for the southern district of Ohio.

(b) VACANCIES.—

(1) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in paragraph (2), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a)—

(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a) to such office, and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(2) MIDDLE DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the middle district of Florida—

(A) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under subsection (a)(2), and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(c) ELIGIBILITY FOR SUBSEQUENT APPOINTMENTS.—A judge holding office in any of the districts enumerated in subsection (a) shall, at the expiration of the term of the judge (other than by reason of paragraph (1)(B) or (2)(B) of subsection (b)) be eligible for reappointment as a bankruptcy judge in that district.———

**SEC. 204. CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 102–361.—The following temporary bankruptcy judgeships authorized by the following paragraphs of section 3(a) of Public Law 102–361, as amended by section 307 of Public Law 104–317 (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The temporary bankruptcy judgeship for the district of Delaware authorized by paragraph (3).

(2) The temporary bankruptcy judgeship for the southern district of Illinois authorized by paragraph (4).

(3) The temporary bankruptcy judgeship for the district of Puerto Rico authorized by paragraph (7).

(b) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 109–8.—The following temporary bankruptcy judgeships authorized by the following subparagraphs of section 1223(b)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The 4 temporary bankruptcy judgeships for the district of Delaware authorized by subparagraph (C).

(2) The temporary bankruptcy judgeship for the southern district of Georgia authorized by subparagraph (E).

(3) One of the 3 temporary bankruptcy judgeships for the district of Maryland authorized by subparagraph (F).

(4) The temporary bankruptcy judgeship for the eastern district of Michigan authorized by subparagraph (G).

(5) The temporary bankruptcy judgeship for the district of New Jersey authorized by subparagraph (I).

(6) The temporary bankruptcy judgeship for the northern district of New York authorized by subparagraph (K).

(7) The temporary bankruptcy judgeship for the southern district of New York authorized by subparagraph (L).

(8) The temporary bankruptcy judgeship for the eastern district of North Carolina authorized by subparagraph (M).

(9) The temporary bankruptcy judgeship for the eastern district of Pennsylvania authorized by subparagraph (N).

(10) The temporary bankruptcy judgeship for the district of South Carolina authorized by subparagraph (S).

(11) The temporary bankruptcy judgeship for the western district of Tennessee authorized by subparagraph (Q).

**SEC. 205. GENERAL PROVISIONS.**

(a) AMENDMENT TO TABLE OF JUDGESHIPS.—In order that the table contained in section 152(a)(2) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of bankruptcy judgeships authorized under sections 202 and 204, such table is amended to read as follows:

| **"Districts** | **Judges** |
|---|---|
| "Alabama: | |
| "Northern | 5 |
| "Middle | 2 |
| "Southern | 2 |
| "Alaska | 2 |
| "Arizona | 7 |

| | |
|---|---|
| "Arkansas: | |
| "Eastern and Western | 4 |
| "California: | |
| "Northern | 9 |
| "Eastern | 7 |
| "Central | 21 |
| "Southern | 4 |
| "Colorado | 5 |
| "Connecticut | 3 |
| "Delaware | 6 |
| "District of Columbia | 1 |
| "Florida: | |
| "Northern | 1 |
| "Middle | 10 |
| "Southern | 5 |
| "Georgia: | |
| "Northern | 10 |
| "Middle | 3 |
| "Southern | 4 |
| "Hawaii | 1 |
| "Idaho | 2 |
| "Illinois: | |
| "Northern | 10 |
| "Central | 3 |
| "Southern | 2 |
| "Indiana: | |
| "Northern | 3 |
| "Southern | 4 |
| "Iowa: | |
| "Northern | 2 |
| "Southern | 2 |
| "Kansas | 4 |
| "Kentucky: | |
| "Eastern | 3 |
| "Western | 3 |
| "Louisiana: | |
| "Eastern | 2 |
| "Middle | 1 |
| "Western | 3 |
| "Maine | 2 |
| "Maryland | 6 |
| "Massachusetts | 5 |
| "Michigan: | |
| "Eastern | 8 |
| "Western | 3 |
| "Minnesota | 4 |
| "Mississippi: | |
| "Northern | 1 |
| "Southern | 2 |
| "Missouri: | |
| "Eastern | 3 |
| "Western | 3 |
| "Montana | 1 |
| "Nebraska | 2 |
| "Nevada | 3 |

| | |
|---|---|
| "New Hampshire | 1 |
| "New Jersey | 9 |
| "New Mexico | 2 |
| "New York: | |
| "Northern | 3 |
| "Southern | 11 |
| "Eastern | 6 |
| "Western | 3 |
| "North Carolina: | |
| "Eastern | 3 |
| "Middle | 2 |
| "Western | 2 |
| "North Dakota | 1 |
| "Ohio: | |
| "Northern | 8 |
| "Southern | 7 |
| "Oklahoma: | |
| "Northern | 2 |
| "Eastern | 1 |
| "Western | 3 |
| "Oregon | 5 |
| "Pennsylvania: | |
| "Eastern | 6 |
| "Middle | 2 |
| "Western | 5 |
| "Puerto Rico | 3 |
| "Rhode Island | 1 |
| "South Carolina | 3 |
| "South Dakota | 2 |
| "Tennessee: | |
| "Eastern | 3 |
| "Middle | 3 |
| "Western | 6 |
| "Texas: | |
| "Northern | 6 |
| "Eastern | 3 |
| "Southern | 6 |
| "Western | 4 |
| "Utah | 4 |
| "Vermont | 1 |
| "Virgin Islands | 0 |
| "Virginia: | |
| "Eastern | 5 |
| "Western | 3 |
| "Washington: | |
| "Eastern | 2 |
| "Western | 5 |
| "West Virginia: | |
| "Northern | 1 |
| "Southern | 1 |
| "Wisconsin: | |
| "Eastern | 4 |
| "Western | 2 |
| "Wyoming | 1". |

(b) SENSE OF CONGRESS.—It is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

**SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE III—NINTH CIRCUIT REORGANIZATION

**SEC. 301. SHORT TITLE.**

This title may be cited as the ''Circuit Court of Appeals Restructuring and Modernization Act of 2005''.

**SEC. 302. DEFINITIONS.**

In this title:

(1) FORMER NINTH CIRCUIT.—The term ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this title.

(2) NEW NINTH CIRCUIT.—The term ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 303(2)(A).

(3) TWELFTH CIRCUIT.—The term ''twelfth circuit'' means the twelfth judicial circuit of the United

States established by the amendment made by section 303(2)(B).

**SEC. 303. NUMBER AND COMPOSITION OF CIRCUITS.**

Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking ''thirteen'' and inserting ''fourteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

| | |
|---|---|
| ''Ninth ..... | California, Guam, Hawaii, Northern Mariana Islands.''; |

and

(B) by inserting after the item relating to the eleventh circuit the following:

| | |
|---|---|
| ''Twelfth ..... | Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''. |

**SEC. 304. JUDGESHIPS.**

(a) NEW JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 5 additional circuit judges for the new ninth circuit court of appeals, whose official duty station shall be in California.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENT OF JUDGES.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional circuit judges for the former

ninth circuit court of appeals, whose official duty stations shall be in California.

(2) EFFECT OF VACANCIES.—The first 2 vacancies occurring on the new ninth circuit court of appeals 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by this subsection shall not be filled.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

**SEC. 305. NUMBER OF CIRCUIT JUDGES.**

The table contained in section 44(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... 20";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... 14".

**SEC. 306. PLACES OF CIRCUIT COURT.**

The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... Honolulu, Pasadena, San Francisco.";

and

(2) by inserting after the item relating to the eleventh circuit the following:

| | |
|---|---|
| "Twelfth ..... | Las Vegas, Missoula, Phoenix, Portland, Seattle.". |

**SEC. 307. ASSIGNMENT OF CIRCUIT JUDGES.**

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this title—

(1) is in California, Guam, Hawaii, or the Northern Mariana Islands shall be a circuit judge of the new ninth circuit as of such effective date; and

(2) is in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

**SEC. 308. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this title may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

**SEC. 309. SENIORITY OF JUDGES.**

The seniority of each judge—

(1) who is assigned under section 307, or

(2) who elects to be assigned under section 308,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

**SEC. 310. APPLICATION TO CASES.**

The following apply to any case in which, on the day before the effective date of this title, an appeal or other proceeding has been filed with the former ninth circuit:

(1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this title had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this title been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) If a petition for rehearing en banc is pending on or after the effective date of this title, the petition shall be considered by the court of appeals to

which it would have been submitted had this title been in full force and effect at the time that the appeal or other proceeding was filed with the court of appeals.

**SEC. 311. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.**

Section 291 of title 28, United States Code, is amended by adding at the end the following:

''(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

''(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.''.

**SEC. 312. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.**

Section 292 of title 28, United States Code, is amended by adding at the end the following:

''(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may in the public interest—

"(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

"(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

"(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

"(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within,

as applicable, the circuit to which the judge is designated or assigned.''.

**SEC. 313. ADMINISTRATION.**

The court of appeals for the ninth circuit as constituted on the day before the effective date of this title may take such administrative action as may be required to carry out this title and the amendments made by this title. Such court shall cease to exist for administrative purposes 2 years after the date of enactment of this Act.

**SEC. 314. EFFECTIVE DATE.**

Except as provided in section 304(c), this title and the amendments made by this title shall take effect 12 months after the date of enactment of this Act.

# TITLE IV—AUTHORIZATION OF APPROPRIATIONS

**SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each of fiscal years 2006 through 2009 such sums as are necessary to carry out this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act. Funds appropriated pursuant to this section in any fiscal year shall remain available until expended.

○

Mr. COBLE. I will be reading Chairman Sensenbrenner's statement.

Art. I, Sec. 8 of the United States Constitution gives Congress the sole obligation and authority to constitute tribunals inferior to the Supreme Court. The exercise of this responsibility requires that Congress from time to time make adjustments in both the number of authorized judges and the structure of our Federal judiciary. The bill before us, the Federal Judgeship and Administrative Efficiency Act of 2005, was written with these duties in mind.

This legislation represents the best opportunity for Congress to enact a comprehensive judgeship bill since the passage of the Federal Judgeship Act of 1990. It authorizes 68 new judgeships, 12 at the circuit level and 56 at the district levels. In addition, the bill contains authority to create 25 permanent or temporary bankruptcy judges.

These new judgeships are both necessary and overdue and substantially reflect the recommendations of the U.S. Judicial Conference. New judgeships will better equip America's Federal court system to properly address rising caseloads and increasingly onerous administrative burdens that undermine public confidence in our Federal courts and threaten the timely, fair, and dispassionate administration of justice that our Constitution envisions.

However, the bill does much more than simply authorizes new judgeships. H.R. 4093 makes changes in the structure of the court of appeals system that are required to modernize, streamline, and improve the administration of justice for nearly 1 in 5 Americans. The bill accomplishes this by realigning the Ninth Circuit Court of Appeals. The Ninth has become so large in geographic size, workload, and number of active and senior judges that it can no longer effectively discharge its constitutional responsibilities on behalf of the American people.

Consider the following: The Ninth has 47 serving judges, a figure that is almost twice the number of total judges in the next-largest circuit. The Ninth is responsible for adjudicating legal disputes that involve 56 million people, or roughly ⅕ of our Nation's total population. This is 25 million more than the next-largest circuit. The Ninth engulfs nearly 40 percent of the geographic area of the United States. The Ninth had the greatest number of appeals filed in 2004 and the highest percentage increase in appeals filed over the past 4 years. Among the circuits, the Ninth is the unrivaled leaders in the greatest number of total appeals still pending, and ranks a close second in largest median time to disposition. At 13,417, the number of total appeals pending in the Ninth Circuit exceeds by almost 3 times the number of total appeals pending in the Fifth Circuit, the next-highest total.

From the Sixth Amendment guarantee to an accused of a speedy and public trial in all criminal prosecutions to the Equal Protection Clause's requirement that promises all American citizens equal treatment under the law in every Federal court, the size, scope, and workload of the Ninth Circuit create unique administrative burdens that imperil the spirit of these fundamental guarantees.

H.R. 4093 remedies the Ninth Circuit's structural and administrative defects by realigning it in the more streamlined circuits. The bill creates a new Ninth that will feature California, Guam, Hawaii, and the Northern Mariana Islands, and a new Twelfth

that includes Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington. In addition, the base text of H.R. 4093 will authorize the President to appoint five new permanent judges and two new temporary judges to the realigned Ninth Circuit, all of whom will establish resident chambers in California.

The additions are consistent with requests made by the Judicial Conference and intended to ensure the new Ninth has resources to match its future caseload requirements. The contours of the Ninth were largely fixed nearly a century ago, in 1912, when Arizona was added to the contiguous States that had originally formed the Ninth Circuit. We can all agree, I think, that much has changed over the last century. It is imperative for Congress to adapt the structure of the Federal courts to respond to changing demands, rather than to insist that the circuits remain unalterably fixed by acts of a past Congress that could not have foreseen the dynamism and contemporary conditions that exist in the modern American West.

Congress has the constitutional obligation to ensure the structure and organization of our Federal circuit courts, promote citizen access to justice, maximize the ability of individual judges to fairly and quickly adjudicate issues before them, and encourage the development of intra-circuit conference among judges. The legitimacy and efficiency of the Federal court system and the quality of justice it dispenses to America's citizens rests upon these principles.

H.R. 4093 takes an important step to advance these crucial goals, and I urge my colleagues to report this final legislation.

Now, before I recognize my friends from Michigan and/or California, under the Budget Act of 1974, the House and Senate are required to adopt at least one budget resolution each year. The Judiciary Committee's obligation to the reconciliation process is to reduce direct spending by at least $65 million in fiscal year 2006 and $285 million on fiscal years 2006 through 2010.

The Committee exceeded these obligations when we reported H.R. 3648, which raised the fees for L visas. In the spirit of fiscal conservatism and in response to the unforeseen budgetary impact of the recent hurricanes, the Committee will include H.R. 4093 in our budget submission. In doing this, we will offset the cost of the creation of the new judgeships with the surplus that we created by raising the fees on L visas. As a result, the Committee will exceed its budgetary obligations and finance implementation of this bill.

Mr. BERMAN. Would the gentleman yield?

Mr. COBLE. I will indeed.

Mr. BERMAN. Will the offsets that are supposedly in this bill deduct the $11 to $12 million in initial startup costs and the ongoing $13 to $14 million in duplicating operational costs from creating a new circuit?

Mr. COBLE. I'm told, Mr. Berman, that it totally reflects all CBO estimates.

Mr. BERMAN. Including the $11 million initial startup costs and the $13 million——

Mr. COBLE. All the CBO estimates, I'm told.

Mr. BERMAN. Do the CBO estimates include the $11 million initial startup costs and the $13 million?

Mr. COBLE. I am told through the parliamentarian, Howard, that is correct. It does include that.

Mr. BERMAN. It does—it includes those figures?

Mr. COBLE. CBO will—prepared costs, all anticipated costs.

Mr. BERMAN. Well, if the CBO hasn't prepared the costs——

Mr. WATT. Can we get this discussion on the record rather than off?

Mr. BERMAN. Yes. If this is about CBO cost estimates which are not yet prepared, how can we say this bill is—all the costs are offset that are created by the additional judgeships plus the split of the circuit plus the ongoing duplicate of costs created by creating a new circuit as well as, of course, the costs for courthouses in the Eleventh and Fifth circuits as a result of damages done by Katrina?

Mr. COBLE. Mr. Berman, we will have the final score before it's submitted tomorrow.

Mr. BERMAN. So we're guessing that these new fees will match these costs.

Mr. COBLE. I'm told, Howard, they're firm estimates by CBO. They will be finalized, I guess, later today, before the submission tomorrow.

Mr. BERMAN. Mr. Chairman, if you would yield further, could I just ask is there something in writing where we could review the firm costs the CBO has estimated?

Mr. COBLE. We don't have it now, Mr. Berman, but I am told that we will have it by the afternoon.

Mr. BERMAN. Well, then, Mr. Chair, if you would yield further, as somebody pointed out, I don't know how we can represent that offsets are covered when we don't have the estimate of the costs.

Mr. COBLE. Well, I am told, Mr. Berman, CBO does not have the authority to do it until—when?—until we report the bill from the Committee.

Mr. BERMAN. And then the only thing I would say is then we should not assert the costs are completely offset if we don't have the CBO estimate of costs.

Mr. COBLE. I wanted to recognize either the gentleman from Michigan or the gentleman from California for an opening statement.

Mr. CONYERS. I seek recognition, Mr. Chairman. And I bid a good morning to the Judiciary Committee.

We're now in our third decade of a discussion about whether we should split the Ninth Circuit Court of Appeals. The issue from one point of view before us is whether the Ninth Circuit is competently performing its duties as it is structured. And with the facts that I have on hand, the answer is clearly yes.

Now, the measure before us purports to divide the Ninth Circuit because the court is too large and, as a result, experiences an unmanageable caseload and that inconsistent decisions and high reversal rates occur as a result. Now, refusing to speculate on other reasons as to why there's a strong interest in dividing the court, I focus on why the Ninth Circuit is able to efficiently and effectively carry out its responsibilities.

Number one, there's no basis for an argument that the Ninth Circuit should be split in order to relieve it of its heavy caseload, as 80 percent of the cases come from California. Reducing the composition of the Ninth Circuit to California and three less hectic jurisdictions—Guam, Hawaii, and Northern Mariana Islands—would

not significantly decrease the amount of work that the court handles.

Secondly, I want to respond in the beginning of this discussion to the argument that the Ninth Circuit in its current form produces inconsistent decisions. Advancements in technology have had a profound effect on our courts and new resources, like an issue-tracking system which allows judges to remain up to date with decisions by other panels on similar issues.

Furthermore, maintaining the Ninth Circuit in its existing form promises efficiency and uniformity, as the States that currently make up the circuit share significant legal interests. In particular, the States share interests in land, water rights, as well as Native American issues.

While the circuit has seen an increase in the number of immigration cases it hears, this Committee is largely responsible for that result. The Patriot Act, the Real ID Act both made several major changes in immigration law that we're familiar with, that have led and will continue to lead to litigation to resolve the novel questions of law that are now being presented. As many of the issues have been answered, we've seen a decrease in such cases in the Ninth Circuit.

And finally, I'd like to address the theory that the Ninth Circuit experiences a higher reversal rate than other appellate courts. The Ninth Circuit's reversal rate is 8.2 percent, while other circuits combined have a reversal rate of 10.0 percent. In essence, the Ninth Circuit's more in line with the Supreme Court than other circuits.

The sole basis for dividing the Ninth Circuit should be if it is unable to perform its duties. This, to me, is clearly not the case, and splitting the Ninth Circuit will not improve judicial efficiency. Actually, such a split appears as if it will do a little more than unnecessarily burden taxpayers, as significant financial costs will come with the restructuring of the Ninth Circuit and creating a new Twelfth Circuit.

I note that there is minimal support from affected groups for this initiative. Neither the Judicial Conference nor the Ninth Circuit support this initiative. The Washington State Bar Association and the American Civil Liberties, among others, have explicitly opposed this idea.

I thank you for listening carefully to my remarks, Mr. Chairman.

Mr. COBLE. You're indeed welcome, Mr. Conyers.

Ladies and gentlemen, just for the record so we'll know where we're going today, the Chairman insisted that we pass these three bills out today. So if we're unable to do that, we will have to return tomorrow. So make your plans accordingly.

Furthermore, we have one of our bills on the House floor today. The Lawsuit Abuse Reduction Act I think will be called up about 2:30—2:00 or 2:30. And of course, as we always do, we will suspend our——

Mr. SCOTT. Tomorrow or today?

Mr. COBLE. Today. And we will suspend Committee activity while that bill is on the floor. So I urge all of you to be aware of that and let's try to get it done today if we can.

Without objection, all opening statements from the Members will be made a part of the record. I will now recognize Members for amendment.

The chair recognizes the gentleman from California, Mr. Issa, for the purpose of offering an amendment in the nature of a substitute.

Mr. ISSA. Thank you, Mr. Chairman. I have an amendment at the desk.

Mr. COBLE. The clerk will read.

The CLERK. Amendment in the nature of a substitute to H.R. 4093, offered by Mr. Issa. Strike all after the enacting clause and insert the following:

Mr. COBLE. Without objection, it will be considered as read.

[The amendment in the nature of a substitute follows:]

# AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4093 OFFERED BY MR. ISSA

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the ''Federal Judgeship and
3 Administrative Efficiency Act of 2005''.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

Sec. 101. Short title.
Sec. 102. Circuit judges for the circuit courts of appeals.
Sec. 103. District judges for the district courts.
Sec. 104. Establishment of article III court in the Virgin Islands.
Sec. 105. Effective date.

TITLE II—BANKRUPTCY JUDGESHIPS

Sec. 201. Short title.
Sec. 202. Authorization for additional bankruptcy judgeships.
Sec. 203. Temporary bankruptcy judgeships.
Sec. 204. Conversion of existing temporary bankruptcy judgeships.
Sec. 205. General provisions.
Sec. 206. Effective date.

TITLE III—NINTH CIRCUIT REORGANIZATION

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Number and composition of circuits.
Sec. 304. Number of circuit judges.
Sec. 305. Places of circuit court.
Sec. 306. Assignment of circuit judges.
Sec. 307. Election of assignment by senior judges.

Sec. 308. Seniority of judges.
Sec. 309. Application to cases.
Sec. 310. Temporary assignment of circuit judges among circuits.
Sec. 311. Temporary assignment of district judges among circuits.
Sec. 312. Administration.
Sec. 313. Effective date.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

# TITLE I—CIRCUIT AND DISTRICT JUDGESHIPS

**SEC. 101. SHORT TITLE.**

This title may be cited as the ''Federal Judgeship Act of 2005''.

**SEC. 102. CIRCUIT JUDGES FOR THE CIRCUIT COURTS OF APPEALS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional circuit judge for the first circuit court of appeals;

(2) 2 additional circuit judges for the second circuit court of appeals;

(3) 1 additional circuit judge for the sixth circuit court of appeals; and

(4) 5 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional circuit judge for the eighth circuit court of appeals; and

(B) 2 additional circuit judges for the ninth circuit court of appeals, whose official duty station shall be in California.

(2) VACANCIES.—

(A) EIGHTH CIRCUIT.—The first vacancy in the office of circuit judge in the eighth circuit court of appeals, occurring 10 years or more after the confirmation date of the judge named to fill the circuit judgeship created in that circuit by paragraph (1)(A) shall not be filled.

(B) NINTH CIRCUIT.—The first 2 vacancies in the office of circuit judge in the ninth circuit court of appeals, occurring 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by paragraph (1)(B) shall not be filled.

(c) TABLE OF JUDGESHIPS.—In order that the table contained in section 44 of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized under subsection (a) of this section, such table is amended to read as follows:

| "Circuits | Number of Judges |
|---|---|
| District of Columbia | 12 |
| First | 7 |
| Second | 15 |
| Third | 14 |
| Fourth | 15 |
| Fifth | 17 |
| Sixth | 17 |
| Seventh | 11 |
| Eighth | 11 |
| Ninth | 33 |
| Tenth | 12 |
| Eleventh | 12 |
| Federal | 12.". |

**SEC. 103. DISTRICT JUDGES FOR THE DISTRICT COURTS.**

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 4 additional district judges for the district of Arizona;

(3) 3 additional district judges for the northern district of California;

(4) 4 additional district judges for the eastern district of California;

(5) 4 additional district judges for the central district of California;

(6) 1 additional district judge for the southern district of California;

(7) 1 additional district judge for the district of Colorado;

(8) 4 additional district judges for the middle district of Florida;

(9) 3 additional district judges for the southern district of Florida;

(10) 1 additional district judge for the district of Idaho;

(11) 1 additional district judge for the northern district of Illinois;

(12) 1 additional district judge for the southern district of Indiana;

(13) 1 additional district judge for the western district of Missouri;

(14) 1 additional district judge for the district of Nebraska;

(15) 1 additional district judge for the district of Nevada;

(16) 1 additional district judge for the district of New Mexico;

(17) 3 additional district judges for the eastern district of New York;

(18) 1 additional district judge for the western district of New York;

(19) 1 additional district judge for the district of Oregon;

(20) 1 additional district judge for the district of South Carolina;

(21) 3 additional district judges for the southern district of Texas;

(22) 2 additional district judges for the eastern district of Virginia; and

(23) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the middle district of Alabama;

(B) 1 additional district judge for the district of Arizona;

(C) 1 additional district judge for the northern district of California;

(D) 1 additional district judge for the district of Colorado;

(E) 1 additional district judge for the middle district of Florida;

(F) 1 additional district judge for the northern district of Iowa;

(G) 1 additional district judge for the district of Minnesota;

(H) 1 additional district judge for the district of New Jersey;

(I) 1 additional district judge for the district of New Mexico;

(J) 1 additional district judge for the southern district of Ohio;

(K) 1 additional district judge for the district of Oregon; and

(L) 1 additional district judge for the district of Utah.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the judicial districts named in paragraph (1) occurring 10 years or more after the confirmation date of the judge named to fill the district judgeship created in that district by paragraph (1) shall not be filled.

(c) EXISTING JUDGESHIPS.—

(1) PERMANENT JUDGESHIPS.—The existing judgeships for the district of Hawaii, the district of Kansas, and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices

shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2) EXTENSION OF TEMPORARY JUDGESHIP.—Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note) is amended in the fifth sentence (relating to the northern district of Ohio) by striking "15 years" and inserting "20 years".

(d) TABLE OF JUDGESHIPS.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized under subsections (a) and (c) of this section, such table is amended to read as follows:

| **"Districts** | **Judges** |
|---|---|
| "Alabama: | |
| "Northern | 8 |
| "Middle | 3 |
| "Southern | 3 |
| "Alaska | 3 |
| "Arizona | 16 |
| "Arkansas: | |
| "Eastern | 5 |
| "Western | 3 |
| "California: | |
| "Northern | 17 |
| "Eastern | 10 |
| "Central | 31 |
| "Southern | 14 |
| "Colorado | 8 |
| "Connecticut | 8 |
| "Delaware | 4 |
| "District of Columbia | 15 |
| "Florida: | |
| "Northern | 4 |
| "Middle | 19 |
| "Southern | 20 |
| "Georgia: | |
| "Northern | 11 |

| | |
|---|---|
| "Middle | 4 |
| "Southern | 3 |
| "Hawaii | 4 |
| "Idaho | 3 |
| "Illinois: | |
| "Northern | 23 |
| "Central | 4 |
| "Southern | 4 |
| "Indiana: | |
| "Northern | 5 |
| "Southern | 6 |
| "Iowa: | |
| "Northern | 2 |
| "Southern | 3 |
| "Kansas | 6 |
| "Kentucky: | |
| "Eastern | 5 |
| "Western | 4 |
| "Eastern and Western | 1 |
| "Louisiana: | |
| "Eastern | 12 |
| "Middle | 3 |
| "Western | 7 |
| "Maine | 3 |
| "Maryland | 10 |
| "Massachusetts | 13 |
| "Michigan: | |
| "Eastern | 15 |
| "Western | 4 |
| "Minnesota | 7 |
| "Mississippi: | |
| "Northern | 3 |
| "Southern | 6 |
| "Missouri: | |
| "Eastern | 7 |
| "Western | 6 |
| "Eastern and Western | 2 |
| "Montana | 3 |
| "Nebraska | 4 |
| "Nevada | 8 |
| "New Hampshire | 3 |
| "New Jersey | 17 |
| "New Mexico | 7 |
| "New York: | |
| "Northern | 5 |
| "Southern | 28 |
| "Eastern | 18 |
| "Western | 5 |
| "North Carolina: | |
| "Eastern | 4 |
| "Middle | 4 |
| "Western | 4 |
| "North Dakota | 2 |
| "Ohio: | |
| "Northern | 11 |

| | |
|---|---|
| "Southern | 8 |
| "Oklahoma: | |
| "Northern | 3 |
| "Eastern | 1 |
| "Western | 6 |
| "Northern, Eastern, and Western. | 1 |
| "Oregon | 7 |
| "Pennsylvania: | |
| "Eastern | 22 |
| "Middle | 6 |
| "Western | 10 |
| "Puerto Rico | 7 |
| "Rhode Island | 3 |
| "South Carolina | 11 |
| "South Dakota | 3 |
| "Tennessee: | |
| "Eastern | 5 |
| "Middle | 4 |
| "Western | 5 |
| "Texas: | |
| "Northern | 12 |
| "Southern | 22 |
| "Eastern | 7 |
| "Western | 13 |
| "Utah | 5 |
| "Vermont | 2 |
| "Virginia: | |
| "Eastern | 13 |
| "Western | 4 |
| "Washington: | |
| "Eastern | 4 |
| "Western | 8 |
| "West Virginia: | |
| "Northern | 3 |
| "Southern | 5 |
| "Wisconsin: | |
| "Eastern | 5 |
| "Western | 2 |
| "Wyoming | 3". |

**SEC. 104. ESTABLISHMENT OF ARTICLE III COURT IN THE VIRGIN ISLANDS.**

(a) ESTABLISHMENT OF JUDICIAL DISTRICT.—

(1) VIRGIN ISLANDS.—Chapter 5 of title 28, United States Code, is amended by inserting after section 126 the following new section:

**"§ 126A. Virgin Islands**

"The Virgin Islands constitutes 1 judicial district comprising 2 divisions.

"(1) The Saint Croix Division comprises the Island of Saint Croix and adjacent islands and cays.

"Court for the Saint Croix Division shall be held at Christiansted.

"(2) The Saint Thomas and Saint John Division comprises the Islands of Saint Thomas and Saint John and adjacent islands and cays.

"Court for the Saint Thomas and Saint John Division shall be held at Charlotte-Amalie.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for chapter 5 of title 28, United States Code, is amended by inserting after the item relating to section 126 the following:

"126A. Virgin Islands.".

(b) NUMBER OF JUDGES.—The table contained in section 133(a) of title 28, United States Code, is amended by inserting after the item relating to Vermont the following:

"Virgin Islands ..... 2".

(c) BANKRUPTCY JUDGES.—The table contained in section 152(a)(2) of title 28, United States Code, is

1 amended by inserting after the item relating to Vermont
2 the following:

"Virgin Islands ..... 0".

3 (d) JUDICIAL CONFERENCES OF CIRCUITS.—Section
4 333 of title 28, United States Code, is amended in the
5 third sentence of the first undesignated paragraph—
6 (1) by striking ", the District Court of the Vir-
7 gin Islands,"; and
8 (2) by striking "to the conferences of their re-
9 spective circuits" and inserting "to the conference of
10 the ninth circuit".
11 (e) JUDGES IN TERRITORIES AND POSSESSIONS.—
12 Section 373 of title 28, United States Code, is amended—
13 (1) in subsection (a), by striking ", the District
14 Court of the Northern Mariana Islands, or the Dis-
15 trict Court of the Virgin Islands" and inserting "or
16 the District Court of the Northern Mariana Is-
17 lands"; and
18 (2) in subsection (e), by striking ", the District
19 Court of the Northern Mariana Islands, or the Dis-
20 trict Court of the Virgin Islands" and inserting "or
21 the District Court of the Northern Mariana Is-
22 lands".
23 (f) ANNUITIES FOR SURVIVORS OF CERTAIN JUDI-
24 CIAL OFFICIALS OF THE UNITED STATES.—Section
25 376(a) of title 28, United States Code, is amended—

(1) in paragraph (1)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands"; and

(2) in paragraph (2)(B), by striking ", the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands" and inserting "or the District Court of the Northern Mariana Islands".

(g) AUTHORITY OF ATTORNEY GENERAL.—Section 526(a)(2) of title 28, United States Code, is amended by striking "and of the district court of the Virgin Islands".

(h) COURTS DEFINED.—Section 610 of title 28, United States Code, is amended—

(1) by striking "the United States District Court for the District of the Canal Zone,"; and

(2) by striking "the District Court of the Virgin Islands,".

(i) UNITED STATES MAGISTRATE JUDGES.—Section 631(a) of title 28, United States Code, is amended—

(1) in the first sentence, by striking "the Virgin Islands, Guam," and inserting "Guam"; and

(2) in the second sentence, by striking "the Virgin Islands, Guam," and inserting "Guam".

(j) COURT REPORTERS.—Section 753(a) of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands" and inserting "and the District Court of Guam".

(k) FINAL DECISIONS OF DISTRICT COURTS.—Section 1291 of title 28, United States Code, is amended by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,".

(l) INTERLOCUTORY DECISIONS.—Section 1292 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ", the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands," and inserting "and the District Court of Guam,"; and

(2) in subsection (d)(4)(A), by striking "the District Court of the Virgin Islands,".

(m) JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 1295(a) of title 28, United States Code, is amended in paragraphs (1) and (2)—

(1) by striking ''the United States District Court for the District of the Canal Zone,''; and

(2) by striking ''the District Court of the Virgin Islands,''.

(n) UNITED STATES AS DEFENDANT.—Section 1346(b)(1) of title 28, United States Code, is amended by striking '', together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands,''.

(o) ADEQUATE REPRESENTATION OF DEFENDANTS.—Section 3006A(j) of title 18, United States Code, is amended by striking ''the District Court of the Virgin Islands,''.

(p) SAVINGS PROVISIONS.—

(1) TENURE OF INCUMBENT JUDGES.—A judge of the District Court of the Virgin Islands in office on the effective date of this section shall continue in office until the expiration of the term for which the judge was appointed, or until the judge dies, resigns, or is removed from office, whichever occurs first. When a vacancy occurs on the court on or after the effective date of this section, the President, in accordance with section 133(a) of title 28, United States Code, shall appoint, by and with the advice

and consent of the Senate, a district judge for the District of the Virgin Islands.

(2) RETIREMENT RIGHTS AND BENEFITS.—The amendments made by this section shall not affect the rights under sections 373 and 376 of title 28, United States Code, of any judge of the District Court of the Virgin Islands who retires on or before the effective date of this section or who continues in office after that date under paragraph (1) of this subsection. Service as a judge of the District Court of the Virgin Islands appointed under section 24 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614) shall be included in calculating service under sections 371 and 372 of title 28, United States Code, and shall not be counted for purposes of section 373 of that title, if the judge is reappointed, after the effective date of this section, under section 133(a) of title 28, United States Code, as district judge for the District of the Virgin Islands.

(q) AMENDMENTS TO REVISED ORGANIC ACT OF THE VIRGIN ISLANDS.—

(1) REPEALS.—Sections 24, 25, 26, and 27 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614, 1615, 1616 and 1617) are repealed.

(2) RIGHTS AND PROHIBITIONS.—Section 3 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1561) is amended in the 23d undesignated paragraph—

(A) by inserting ''article III;'' after ''section 9, clauses 2 and 3;'' and

(B) by striking ''That all offenses against the laws of the United States'' and all that follows through ''section 22(b) of this Act or'' and inserting ''That all offenses against the laws of the Virgin Islands which are prosecuted''.

(3) JURISDICTION.—Section 21 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1611) is amended to read as follows:

**''SEC. 21. JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.**

''(a) JURISDICTION OF THE COURTS OF THE VIRGIN ISLANDS.—The judicial power of the Virgin Islands shall be vested in such trial and appellate courts as may have been or may hereafter be established by local law. The local courts of the Virgin Islands shall have jurisdiction over all causes of action in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

"(b) PRACTICE AND PROCEDURE.—The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

(4) INCOME TAX MATTERS.—Section 22 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1612) is amended to read as follows:

**"SEC. 22. JURISDICTION OVER INCOME TAX MATTERS.**

"The United States District Court for the District of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1986 shall constitute an offense against the Government of the Virgin Islands and may be prosecuted in the name of the Government of the Virgin Islands by the appropriate officers thereof in the United States District Court for the District

of the Virgin Islands without the request or consent of the United States attorney for the Virgin Islands.''.

(5) APPELLATE JURISDICTION.—Section 23A of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1613a) is amended—

(A) by striking ''District Court of the Virgin Islands'' each place it appears and inserting ''United States District Court for the District of the Virgin Islands''; and

(B) in subsection (b), by striking ''pursuant to section 24(a) of this Act: *Provided,* That no more than one of them may be a judge of a court established by local law.'' and inserting ''pursuant to chapter 13 of title 28, United States Code, or a recalled senior judge of the former District Court of the Virgin Islands. The chief judge of the United States Court of Appeals for the Third Circuit may assign to the appellate division a judge of a court of record of the Virgin Islands, except that no more than 1 of the judges sitting in the appellate division at any session may be a judge of a court established by local law.''.

(r) ADDITIONAL REFERENCES.—Any reference in any provision of law to the ''District Court of the Virgin

Islands'' shall, on and after the effective date of this section, be deemed to be a reference to the United States District Court for the District of the Virgin Islands.

(s) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. Any complaint or proceeding pending in the District Court of the Virgin Islands on the effective date of this section may be pursued to final determination in the United States District Court for the District of the Virgin Islands, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Federal Circuit, and the Supreme Court of the United States.

**SEC. 105. EFFECTIVE DATE.**

Except as provided in section 104(s), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE II—BANKRUPTCY JUDGESHIPS

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Enhanced Bankruptcy Judgeship Act of 2005''.

**SEC. 202. AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.**

The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) 1 additional bankruptcy judgeship for the eastern district of California.

(3) 2 additional bankruptcy judgeships for the middle district of Florida.

(4) 2 additional bankruptcy judgeships for the northern district of Georgia.

(5) 1 additional bankruptcy judgeship for the southern district of Georgia.

(6) 1 additional bankruptcy judgeship for the eastern district of Kentucky.

(7) 1 additional bankruptcy judgeship for the district of Maryland.

(8) 3 additional bankruptcy judgeships for the eastern district of Michigan.

(9) 1 additional bankruptcy judgeship for the southern district of New York.

(10) 1 additional bankruptcy judgeship for the western district of Pennsylvania.

(11) 1 additional bankruptcy judgeship for the western district of Tennessee.

(12) 1 additional bankruptcy judgeship for the eastern district of Texas.

(13) 1 additional bankruptcy judgeship for the district of Utah.

**SEC. 203. TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeships shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) 1 additional bankruptcy judgeship for the northern district of Florida.

(2) 2 additional bankruptcy judgeships for the middle district of Florida.

(3) 1 additional bankruptcy judgeship for the northern district of Indiana.

(4) 1 additional bankruptcy judgeship for the northern district of Mississippi.

(5) 1 additional bankruptcy judgeship for the district of Nevada.

(6) 1 additional bankruptcy judgeship for the western district of North Carolina.

(7) 1 additional bankruptcy judgeship for the southern district of Ohio.

(b) VACANCIES.—

(1) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in paragraph (2), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a)—

(A) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subsection (a) to such office, and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(2) MIDDLE DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the middle district of Florida—

(A) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under subsection (a)(2), and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(c) ELIGIBILITY FOR SUBSEQUENT APPOINTMENTS.—A judge holding office in any of the districts enumerated in subsection (a) shall, at the expiration of the term of the judge (other than by reason of paragraph (1)(B) or (2)(B) of subsection (b)) be eligible for reappointment as a bankruptcy judge in that district.

**SEC. 204. CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**

(a) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 102–361.—The following temporary bankruptcy judgeships authorized by the following paragraphs of section 3(a) of Public Law 102–361, as amended by section 307 of Public Law 104–317 (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The temporary bankruptcy judgeship for the district of Delaware authorized by paragraph (3).

(2) The temporary bankruptcy judgeship for the southern district of Illinois authorized by paragraph (4).

(3) The temporary bankruptcy judgeship for the district of Puerto Rico authorized by paragraph (7).

(b) JUDGESHIPS AUTHORIZED BY PUBLIC LAW 109–8.—The following temporary bankruptcy judgeships authorized by the following subparagraphs of section 1223(b)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code:

(1) The 4 temporary bankruptcy judgeships for the district of Delaware authorized by subparagraph (C).

(2) The temporary bankruptcy judgeship for the southern district of Georgia authorized by subparagraph (E).

(3) One of the 3 temporary bankruptcy judgeships for the district of Maryland authorized by subparagraph (F).

(4) The temporary bankruptcy judgeship for the eastern district of Michigan authorized by subparagraph (G).

(5) The temporary bankruptcy judgeship for the district of New Jersey authorized by subparagraph (I).

(6) The temporary bankruptcy judgeship for the northern district of New York authorized by subparagraph (K).

(7) The temporary bankruptcy judgeship for the southern district of New York authorized by subparagraph (L).

(8) The temporary bankruptcy judgeship for the eastern district of North Carolina authorized by subparagraph (M).

(9) The temporary bankruptcy judgeship for the eastern district of Pennsylvania authorized by subparagraph (N).

(10) The temporary bankruptcy judgeship for the district of South Carolina authorized by subparagraph (S).

(11) The temporary bankruptcy judgeship for the western district of Tennessee authorized by subparagraph (Q).

**SEC. 205. GENERAL PROVISIONS.**

(a) TABLE OF JUDGESHIPS.—In order that the table contained in section 152(a)(2) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of bankruptcy judgeships authorized under sections 202 and 204, such table is amended to read as follows:

| **"Districts** | **Judges** |
|---|---|
| "Alabama: | |
| "Northern | 5 |
| "Middle | 2 |
| "Southern | 2 |
| "Alaska | 2 |
| "Arizona | 7 |

| | |
|---|---|
| "Arkansas: | |
| "Eastern and Western | 4 |
| "California: | |
| "Northern | 9 |
| "Eastern | 7 |
| "Central | 21 |
| "Southern | 4 |
| "Colorado | 5 |
| "Connecticut | 3 |
| "Delaware | 6 |
| "District of Columbia | 1 |
| "Florida: | |
| "Northern | 1 |
| "Middle | 10 |
| "Southern | 5 |
| "Georgia: | |
| "Northern | 10 |
| "Middle | 3 |
| "Southern | 4 |
| "Hawaii | 1 |
| "Idaho | 2 |
| "Illinois: | |
| "Northern | 10 |
| "Central | 3 |
| "Southern | 2 |
| "Indiana: | |
| "Northern | 3 |
| "Southern | 4 |
| "Iowa: | |
| "Northern | 2 |
| "Southern | 2 |
| "Kansas | 4 |
| "Kentucky: | |
| "Eastern | 3 |
| "Western | 3 |
| "Louisiana: | |
| "Eastern | 2 |
| "Middle | 1 |
| "Western | 3 |
| "Maine | 2 |
| "Maryland | 6 |
| "Massachusetts | 5 |
| "Michigan: | |
| "Eastern | 8 |
| "Western | 3 |
| "Minnesota | 4 |
| "Mississippi: | |
| "Northern | 1 |
| "Southern | 2 |
| "Missouri: | |
| "Eastern | 3 |
| "Western | 3 |
| "Montana | 1 |
| "Nebraska | 2 |
| "Nevada | 3 |

| | |
|---|---|
| "New Hampshire | 1 |
| "New Jersey | 9 |
| "New Mexico | 2 |
| "New York: | |
| "Northern | 3 |
| "Southern | 11 |
| "Eastern | 6 |
| "Western | 3 |
| "North Carolina: | |
| "Eastern | 3 |
| "Middle | 2 |
| "Western | 2 |
| "North Dakota | 1 |
| "Ohio: | |
| "Northern | 8 |
| "Southern | 7 |
| "Oklahoma: | |
| "Northern | 2 |
| "Eastern | 1 |
| "Western | 3 |
| "Oregon | 5 |
| "Pennsylvania: | |
| "Eastern | 6 |
| "Middle | 2 |
| "Western | 5 |
| "Puerto Rico | 3 |
| "Rhode Island | 1 |
| "South Carolina | 3 |
| "South Dakota | 2 |
| "Tennessee: | |
| "Eastern | 3 |
| "Middle | 3 |
| "Western | 6 |
| "Texas: | |
| "Northern | 6 |
| "Eastern | 3 |
| "Southern | 6 |
| "Western | 4 |
| "Utah | 4 |
| "Vermont | 1 |
| "Virgin Islands | 0 |
| "Virginia: | |
| "Eastern | 5 |
| "Western | 3 |
| "Washington: | |
| "Eastern | 2 |
| "Western | 5 |
| "West Virginia: | |
| "Northern | 1 |
| "Southern | 1 |
| "Wisconsin: | |
| "Eastern | 4 |
| "Western | 2 |
| "Wyoming | 1". |

(b) SENSE OF CONGRESS.—It is the sense of the Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis in Bakersfield, California.

**SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

# TITLE III—NINTH CIRCUIT REORGANIZATION

**SEC. 301. SHORT TITLE.**

This title may be cited as the ''Judicial Administration and Improvements Act of 2005''.

**SEC. 302. DEFINITIONS.**

In this title:

(1) FORMER NINTH CIRCUIT.—The term ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this title.

(2) NEW NINTH CIRCUIT.—The term ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 303(2)(A).

(3) TWELFTH CIRCUIT.—The term ''twelfth circuit'' means the twelfth judicial circuit of the United

States established by the amendment made by section 303(2)(B).

**SEC. 303. NUMBER AND COMPOSITION OF CIRCUITS.**

Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking ''thirteen'' and inserting ''fourteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

| | |
|---|---|
| ''Ninth ..... | California, Guam, Hawaii, Northern Mariana Islands.''; |

and

(B) by inserting after the item relating to the eleventh circuit the following:

| | |
|---|---|
| ''Twelfth ..... | Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''. |

**SEC. 304. NUMBER OF CIRCUIT JUDGES.**

The table contained in section 44(a) of title 28, United States Code, as amended by section 102(c) of this Act, is further amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

| | |
|---|---|
| ''Ninth ..... | 19''; |

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... 14".

**SEC. 305. PLACES OF CIRCUIT COURT.**

The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

"Ninth ..... Honolulu, Pasadena, San Francisco.";

and

(2) by inserting after the item relating to the eleventh circuit the following:

"Twelfth ..... Las Vegas, Missoula, Phoenix, Portland, Seattle.".

**SEC. 306. ASSIGNMENT OF CIRCUIT JUDGES.**

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this title—

(1) is in California, Guam, Hawaii, or the Northern Mariana Islands shall be a circuit judge of the new ninth circuit as of such effective date; and

(2) is in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

**SEC. 307. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this title may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

**SEC. 308. SENIORITY OF JUDGES.**

The seniority of each judge—

(1) who is assigned under section 306, or

(2) who elects to be assigned under section 307,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

**SEC. 309. APPLICATION TO CASES.**

The following apply to any case in which, on the day before the effective date of this title, an appeal or other proceeding has been filed with the former ninth circuit:

(1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this title had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be trans-

ferred to the court to which the matter would have been submitted had this title been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) If a petition for rehearing en banc is pending on or after the effective date of this title, the petition shall be considered by the court of appeals to which it would have been submitted had this title been in full force and effect at the time that the appeal or other proceeding was filed with the court of appeals.

**SEC. 310. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.**

Section 291 of title 28, United States Code, is amended by adding at the end the following:

''(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

''(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge

of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.''.

**SEC. 311. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.**

Section 292 of title 28, United States Code, is amended by adding at the end the following:

''(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may, in the public interest—

''(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

''(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

''(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a divi-

sion thereof, whenever the business of that court so requires; and

"(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

"(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.".

**SEC. 312. ADMINISTRATION.**

The court of appeals for the ninth circuit as constituted on the day before the effective date of this title may take such administrative action as may be required to carry out this title and the amendments made by this title. Such court shall cease to exist for administrative purposes 2 years after the date of the enactment of this Act.

**SEC. 313. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect no later than December 31, 2006.

# TITLE IV—AUTHORIZATION OF APPROPRIATIONS

**SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each of fiscal years 2006 through 2009 such sums as are nec-

1 essary to carry out this Act, including such sums as may
2 be necessary to provide appropriate space and facilities for
3 the judicial positions created by this Act. Funds appro-
4 priated pursuant to this section in any fiscal year shall
5 remain available until expended.

Mr. ISSA. Thank you, Mr. Chairman.

My amendment primarily does two things. It allows the seven judges that are to be appointed to the Ninth Circuit to be appointed immediately rather than a year from now. Secondly, it mandates that the Ninth Circuit be split no later than December 31, 2006. The amendment also makes a technical correction for a typographical error on page 30, changing the number 20 to line 19, as it should be.

So, Chairman, California desperately needs Federal judges. This change allows us to get the judges we need immediately. Our caseload is not only significant, but, as the chair is well aware, when judges are first elevated, they have a learning curve or a time necessary to be able to build their caseload. This is particularly significant with the other changes that are anticipated in the Ninth Circuit.

This change is long overdue. I certainly have been an advocate for expanding the number of judges on the Ninth Circuit. In a perfect world, Mr. Conyers's point about the nature of immigration cases that clog the Ninth Circuit would be dealt with now, but I would hope that the Ranking Member would appreciate that he said it here, that this was a challenge, there is an adjustment, and when we bring a later bill to consolidate all of the cases on immigration to a single court, that he would look favorably on unifying that particular part of the law in order to have one standard nationwide.

In the interim, though, these are sorely needed, and I would hope that this amendment would be taken as it is offered, as something absolutely necessary if California, with or without the splitting of the Ninth Circuit, is to continue to be able to keep its caseload, as the Ranking Member said, consistent with constitutional requirements for a speedy trial.

Thank you. I yield back.

Mr. COBLE. I thank the gentleman. Are there any second-degree amendments to the Issa amendment in the nature of a substitute?

The gentleman from California.

Mr. BERMAN. Is the Issa substitute amendment before us at this time?

Mr. COBLE. Yes, sir.

Mr. BERMAN. Could I ask——

Mr. COBLE. For what purpose does the gentleman seek recognition? Strike the last word?

Mr. BERMAN. Strike the last word.

Mr. COBLE. The gentleman from California is recognized for 5 minutes.

Mr. BERMAN. I thank the gentleman. I would like to just ask the maker of the amendment a couple of questions to see how he's dealt with some of the——

Well, let me withdraw my seeking recognition to ask a parliamentary inquiry point first, if I might, Mr. Chairman.

Mr. COBLE. Without objection.

Mr. BERMAN. Is a motion to amendment the Issa substitute in order at this time?

Mr. COBLE. Yes.

Mr. BERMAN. And will speaking on the bill prejudice my ability to then make that motion? I guess I should offer my amendment now.

I have an amendment, along with Ms. Lofgren, Ms. Waters, Mr. Schiff, Ms. Sánchez at the desk.

Mr. COBLE. The clerk will read.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 4093, offered by Mr. Berman, Ms. Waters, Mr. Schiff, Ms. Lofgren, and Ms. Sánchez, to strike title III.

[The amendment offered by Mr. Berman follows:]

(Issa)

**AMENDMENT TO THE**
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**
**TO H.R. 4093**
**OFFERED BY MR. BERMAN OF CALIFORNIA**

Ms. Waters
Mr. Schiff
Ms. Lofgren
Ms. Sanchez

Strike Title III.

Mr. COBLE. The gentleman from California is recognized for 5 minutes.

Mr. BERMAN. Thank you, Mr. Chairman. I have a lot I'd like to say and I may ask the Committee's indulgence to give me some time.

But I'd like initially just to establish with the maker of his amendment—your amendment in the nature of a substitute creates the new judges for the two new circuits in title I of the bill, rather than in title III. I see in the bill a reference to five additional judges for the Ninth Circuit Court of Appeal. That's permanent judges, and then two temporary. For the new Twelfth Circuit Court of Appeal

does the gentleman propose any additional judgeships?

Mr. ISSA. We retain all the other judgeships that were originally in the bill. The Twelfth Circuit, I believe, does not get additional judgeships, but there are——

Mr. BERMAN. Well, by definition, there's nothing in the original bill that deals with the Twelfth Circuit because those judgeships were created in title III.

Mr. ISSA. That's correct.

Mr. BERMAN. So there are no new judgeships created in the Twelfth Circuit.

Mr. COBLE. In title I.

Mr. BERMAN. Are they in title III?

Mr. ISSA. Yes.

Mr. BERMAN. Where?

Mr. ISSA. All the judgeships are in title I. There are no new judgeships. All the 14 judgeships for the Twelfth Circuit will come from the previous Ninth Circuit.

Mr. BERMAN. And are there 14 judges with an official duty station in the——

Mr. ISSA. In those States, yes.

Mr. BERMAN. There are?

Mr. ISSA. Yes. Including, I believe, two that are authorized and not filled, but are in the process of being filled. There are four vacancies in the existing Ninth Circuit.

Mr. BERMAN. There are. That I know, yes. All right.

All right, then, Mr. Chairman, I'll speak in favor of my amendment.

Mr. COBLE. The gentleman is recognized.

Mr. BERMAN. To strike title III, which is the split of the Ninth Circuit into the Ninth and Twelfth circuits.

This bill, and even the amendment in the nature of a substitute, starts off on the right track. We do have to provide, and I think there's a general consensus that we need to provide, additional Federal judgeships so that courts have the resources they need in order to function efficiently. But it is in title III of both the substitute and the original bill that I have my very strong objection.

Presumably the Ninth Circuit is divided into two separate circuits to decrease efficiencies that are related to the Ninth Circuit's size, its geography, its number of judges, and its limited en banc procedure. With respect to splitting the Ninth Circuit, the Chairman stated—and by that I mean Chairman Sensenbrenner—"It is no longer a question of if, but when." I would reply, if it ain't broke, don't fix it.

I'd first like to make some objections to the process. This particular new alignment that is being proposed in the bill and in the substitute has never been heard in either the full Committee or the Subcommittee. No hearing has been held on this particular alignment. What that means is the proponents of change have not had to make their case and—of this particular change have not had to make their case and, perhaps even more importantly, the judges of the Ninth Circuit have not had a chance to indicate their concerns about this particular proposed split.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. I'd be happy to.

Mr. ISSA. The Ninth Circuit has been at least to many Members' offices, including mine, to go over the details of this plan. And we did meet with them this week. I apologize if they didn't get to your office.

Mr. BERMAN. By and large we have a process, a hearing process where people present testimony, the Members in Committee get to ask questions. Such a hearing was never heard on this particular alignment. Moreover, the Subcommittee markup was cancelled and it was pulled to full Committee. I think, particularly in the context of relationships with a co-equal branch of Government, it is wrong not to have given both those people who propose this split and the people who are very strongly opposed to the split a chance to make their case directly in a formal Subcommittee hearing.

I understand where we've had a hearing on a bill in the previous year and then the next year we skip that hearing because the arguments are fresh in our mind. This is a very different split than was taken up last year in Committee and on the floor of the House.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. I'd be happy to.

Mr. ISSA. Is there a split of any combination that you would approve of, or is—you know, there's been 22 different hearings on this.

Mr. BERMAN. There are splits on which I would not use the argument that no hearing had been held.

Mr. ISSA. I understand the gentleman.

Mr. BERMAN. And that's my point, that I think, out of fairness, the judges of the Ninth Circuit, the bar associations representing attorneys in this area, should have had an opportunity to comment on this particular alignment.

But let's move on.

The reasons to oppose this split, I think, are very clear. I mentioned earlier the startup costs of about $11.6 million, and every year annually, apart from the expenses of additional judges, there are $13.8 million in duplicated operating costs just for setting up the separate administrative processes for a new circuit.

A large, large majority of the Ninth Circuit judges oppose this split and have consistently voted against it. Only three of the nonsenior judges now on the Ninth Circuit, and many more of those judges who are from other parts of the circuit than California, oppose—a majority of those from other parts of the circuit other than California also oppose the split of the Ninth Circuit.

The Judicial Conference says that it is wrong to link a splitting of the Ninth Circuit to a national judgeship bill. And I'll tell you why. One reason, one very practical reason why, it's just what I said on the floor of the House last year. You'll go and you'll have your fun splitting the Ninth Circuit, no one will ever raise an issue about judicial philosophy or ideology being the motivating cause for proposing this split. They'll use statistics which can be manipulated. I have my own to come back at you with. But in the end of the day, you're doing a one-house bill.

So once again, the House, this Committee and the House will be able to say they got a split of the Ninth Circuit. And when it dies in the Senate, it dies with the additional judgeships and the rest of the country and the area of the Ninth Circuit will lose district judgeships which are desperately needed, new circuit judgeships which are desperately need.

Mr. ISSA. If the gentleman would yield.

Mr. BERMAN. I ask unanimous consent for 5 additional minutes, if I may, and then——

Mr. COBLE. Without objection.

Mr. BERMAN. Thank you.

Mr. ISSA. Would the gentleman yield?

Mr. BERMAN. I will.

Mr. ISSA. Thank you. Just a small technical correction. The conference, actually, is neutral on this. They have not opposed it.

Mr. BERMAN. No, their position is that it is wrong for the Ninth Circuit split to be linked to the national judgeship bill. That's all I said.

Mr. ISSA.—opposing the merits of the proposal to divide the Ninth Circuit.

Mr. BERMAN. If the gentleman would—I was quite specific. They oppose the strategy of last year and this year of linking the entire national judgeship bill—and they're very clear on that.

Mr. ISSA. One other small correction.

Mr. BERMAN. If I may reclaim my time.

Mr. ISSA. Of course.

Mr. BERMAN. Governor Schwarzenegger strongly opposes the split. The Governors of Washington and Arizona oppose this split. The American Bar Association opposes the split. The Federal Bar Association opposes this split. The State Bar Association from the States of Montana, Washington, Hawaii, and Arizona all opposed the split. The judges on the Ninth Circuit and the lawyers who practice in the Ninth Circuit oppose this split. And as you know, the California Bar, of course, opposes the split, as do the county bar associations of all the major regions of California, Orange County, San Diego, San Francisco, and Los Angeles.

Splitting the circuit is a complex process that risks seriously disrupting the administration of justice. I'd ask the gentleman on my time, in the new Twelfth Circuit, what precedent applies?

Mr. ISSA. If I can answer. The—as the gentleman knows, it's Congress's exclusive jurisdiction to name the lesser courts, including the Ninth and the Twelfth. It is not the——

Mr. BERMAN. I'll let you on your time make your points, but if you—I offered to yield to you to answer my question. What precedent will the new Twelfth Circuit apply when the first case comes in front of a district court in the Twelfth Circuit?

Mr. ISSA. They will apply the existing Supreme Court and the Ninth Circuit existing——

Mr. BERMAN. Where in the bill does it say that they will apply the Ninth Circuit precedent?

Mr. ISSA. We have previously—with all due respect to the gentleman, we have previously split, for example, the Fifth Circuit, and that precedent is already set.

Mr. BERMAN. No, that's not right. The Fifth Circuit and the Eleventh—the Congress failed to speak on the issue of what precedent would apply. And in the end of the day, in the new Eleventh Circuit many years after it was split, the Eleventh Circuit decided that the Fifth Circuit precedents should apply. And then all the scholarly articles that came out afterwards said, What a mistake it was for Congress not to designate what the precedent——

Mr. ISSA. And I certainly would look forward to working with the gentleman to make that——

Mr. BERMAN. Another deficiency in this bill is the failure to specify what precedent applies. This means district judges—no one in either the Ninth or Twelfth circuit is bound by a Fifth or Eleventh Circuit decision. The Supreme Court has not spoken on this issue. You're laying in motion here a process that could take years to resolve, what precedent applies. Different district courts will make different decisions, appeals will be made just on this issue, and several years will pass in a state of confusion and a lack of clarity by the failure of the bill to do this.

Now, let's get to some of the specific statistical arguments, if I might.

Proponents of the split note that the Ninth Circuit is almost twice as many judges as the next-largest Federal circuit; serves the largest population by almost the same factor; and deals with the largest number of appeals. They cite these numbers to support the contention that the Ninth Circuit is overburdened and is simply too huge to operate efficiently.

In the first instance, out of over 15,000 appeals filed in the Ninth Circuit, over 10,000 of them are in California alone. What you have done in this split is you have provided 10,000—twice as many appeals filed in California as in all the other parts of the Ninth Circuit combined. But you've apportioned the judgeships, where you've given less than 60 percent of the judges for the Ninth Circuit, which have over 72 percent of the cases. So even in your effort to split the Ninth Circuit, you haven't realistically dealt with the caseload apportionment.

The statistics—any circuit which includes all of California will have by far—should have the largest number of judges, will have the largest number of appeals, and serves by far the largest population. Statistics show that the Ninth Circuit handled about 207 appeals per circuit judge from October 2001 through September 2001. It sounds like a lot, but it was less than the Fourth Circuit, the Fifth Circuit, the Seventh Circuit, and the Eleventh Circuit, with the Fifth Circuit handling almost twice as many appeals per judge. The Ninth Circuit is actually in the middle of the pack with regard to the number of appeals handled annually.

Mr. COBLE. Mr. Berman, again your time has expired.

Mr. BERMAN. Well, I will—I'll use perhaps other people yielding and let someone else——

Mr. GOHMERT. Mr. Chairman.

Mr. COBLE. For what purpose does the gentleman from Texas seek recognition?

Mr. GOHMERT. Move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. Mr. Chairman, I'll be briefer than that. Just to address the issue of what precedents would the Twelfth Circuit follow, my understanding is that it would, in the tradition of the Ninth Circuit, blow off most precedent and do what it felt like was appropriate. I say that somewhat facetiously, since the Ninth Circuit has a great deal of trouble following any precedent, including its own. But for that reason, I don't see the Twelfth Circuit's—who they follow or whom they follow as precedent as being a major issue because the Ninth Circuit doesn't have its history of doing that.

And I do yield back.

Mr. COBLE. The gentleman yields back.

Mr. ISSA. Will the gentleman yield?

Mr. COBLE. The gentleman has yielded back. The gentleman from Wisconsin.

Mr. GREEN. Mr. Chairman, move to strike the last word.

Mr. COBLE. Gentleman is recognized for 5 minutes.

Mr. GREEN. Mr. Chairman, I yield my time to the congressman——

Mr. ISSA. I thank the gentleman.

You know, Mr. Berman made some excellent points and I look forward to working with him on any technical corrections that he

would propose. But I do want to make a couple of points. One is, the States that would comprise the new Ninth Circuit account for 72 percent of the caseloads filed through June 30, 2005, and presently have 15 authorized judgeships equalling 54 percent of the active judgeships. Under H.R. 4093, the new Ninth will increase their authorized judgeships to 22, accounting for 63 percent of the judgeships between the circuits. In fact, once these new judges, which we moved to have placed immediately, are in place, we will actually be lowering, not raising, the caseload. And as I said in my opening remarks—and I hope the gentleman will work with me on this—if we are able to take the burden of the incredibly voluminous growing caseload of—and clear the docket from these cases that involve strictly immigration and centralize that in a court, we will further refine the ability of the Ninth Circuit to work on its primary caseload.

Just one quick more, since I am on borrowed time. I think it is really important that we here, on a bipartisan basis, recognize that Congress has an absolute requirement to look at the efficiencies, inefficiencies, fairness and working relationship of lower courts. It's something the House has an absolute responsibility to do. And in looking at Mr. Conyers's opening remarks about the Ninth Circuit not being broken, I would only ask if we were to be the equivalent—do the equivalent of not breaking up the Ninth Circuit, should we in fact collapse all the other circuits into just three to four circuits?

The fact is that the entire Louisiana Purchase would be roughly equal to the Ninth Circuit as it presently is. Would the gentleman from Michigan recognize that if all the way down to Louisiana were part of a single circuit, that that would be roughly equivalent? We have such a large portion of the population in the Ninth Circuit at this time that basically we would be taking the other circuits and collapsing into four if we thought bigger was better.

There has been an argument in the past on splitting differently—and Mr. Berman was very good to point out that this is a different split. But Mr. Berman was very accurate in pointing out previously that splitting California into two parts or more would create the possibility of two separate interpretations of State law within the same State. And that, obviously, would be a mistake.

Are we going to be large in California? Absolutely. One of the statistics that I'll never get out of my mind is if just L.A. County were its own circuit, it would be the fifth-largest circuit.

Mr. SCHIFF. Would the gentleman from Wisconsin yield?

Mr. GREEN. I yield back.

Mr. COBLE. For what purpose does the gentleman from California seek recognition?

Mr. SCHIFF. I move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, Members, I also speak in opposition to this motion both to append the split of the Ninth Circuit to the financing and new judgeships, which the Judicial Conference has opposed, and for good reason, but also this extraordinary process that we are using to split the Ninth Circuit and this belabored argument that somehow what we are really concerned about is the efficiency of the Ninth Circuit.

This is now the second, third, or fourth form of the Ninth Circuit split. I think last year it was going to be split into three circuit; this year it's two. The composition of the two is different than it was 6 months ago. And in fact, when you look at what the new caseload of the new Ninth Circuit would be, it is higher per judge than lower under this proposal and it's certainly not equitable with the other new circuit that would be split off from it.

And in hearing the arguments on the floor on this last year and in hearing the conversations among Members on it, it was plain this was all about ideology, that people disagreed with the ideology, and that's no surprise in this Committee room. People disagreed with decisions coming out of the Ninth Circuit. But that is not a reason to split a circuit. And the White Commission that was established to study when you split a circuit and when you don't was unanimous in the conclusion it should not be based on ideology.

And it warms my heart to hear all this concern over the workload of the Ninth Circuit judges and all this great sympathy for those poor Ninth Circuit judges, but this is not what the Ninth Circuit judges are asking for, it's not what the litigants are asking for, it's not what the Republican governors in the region are asking for. And it doesn't appear to be based on any of the facts that have been produced by the court.

The caseload of this new Ninth Circuit would be 536 cases per judge, as compared to 317 cases per judge for the proposed Twelfth Circuit. This would leave judges in the Ninth Circuit with 219 more cases per judge. That doesn't seem to be a well-thought-out distribution of judicial resources.

What's more, this idea has been circulating for 30 years, that the Ninth Circuit is simply too big and too inefficient. And frankly, I think that there may come a time where it is appropriate to split the Ninth Circuit. And I'm not irrevocably and for all time opposed to that. But I would like to make sure that we're doing it for a rational reason, that it's based on the efficiency of the courts, that we have input from the courts—none of which we've really had here because the reality is this is about ideology not about efficiency.

Judge Kozinski, a Reagan appointee, testified before the Subcommittee in 2003, which may have been the last time we heard on this issue, "Dividing a circuit should not take place to make the lives of the judges or lawyers easier or cozier or to reduce travel burdens. It should only take place when there is demonstrated proof that a circuit is not operating effectively and there is a consensus among the bench and bar and public that it serves that division is the appropriate remedy."

Mr. ISSA. Would the gentleman yield?

Mr. SCHIFF. There is—you know, the gentleman has had far more time than I'm going to get on this. If I have time, I'll be happy to yield at the conclusion of my remarks.

There is none of the consensus that Judge Kozinski mentioned. There is none of the demonstrated proof that the circuit is not operating effectively. There is only demonstrated evidence of a dislike in this Congress, perhaps this Committee, for the jurisprudence of the circuit. But that is the last reason why you should split a circuit. Indeed, the division is strongly opposed by a bipartisan coalition of judges, experts, and officials because it would eliminate some of the advantages of the size of the circuit. Moreover, there

are enormous startup costs that would be associated with this split, anywhere up to about $100 million, depending on where the new headquarters are located. The judges themselves have voted 30–9 against division of the circuit. Our Governor in California opposes division of the circuit—not that I'm always in agreement with our Governor, but I am on this one.

Mr. ISSA. And we will note that this time.

Mr. SCHIFF. But in sum, the point I want to emphasize is if we're going to really, seriously contemplate a split—and again, I would be open to the idea—let's contemplate it in the right way. Let's have a hearing where we have the experts testify before the Committee, where we look at the analyses, where we get the direct input from the Judicial Conference and from the Ninth Circuit judges and litigants, and then let's make a rational determination. Let's not start with the conclusion and try to justify it.

Mr. ISSA. If the gentleman would yield?

Mr. SCHIFF. I would yield to my colleague.

Mr. ISSA. I appreciate the gentleman's remarks. Certainly the 22 hearings that have been held should be at least a partial answer to your question. I would like to note that the White Commission, although it didn't support breaking up the circuit, it also recommended that the Ninth Circuit reorganize into three adjacent divisions, which it hasn't done. So to not take part and then want the other is——

Mr. COBLE. The gentleman's time has expired.

Mr. SCHIFF. May I have an additional 30 seconds?

Mr. COBLE. Thirty seconds, without objection.

Mr. SCHIFF. I would just say, yes, there have been hearings on this in the distant past. But if you listen to the testimony from the hearings, it doesn't support the split. And that's the point. We haven't had testimony supporting this split, and certainly not the far weight of that testimony.

And I thank the Chairman.

Mr. COBLE. The gentleman's time has expired.

Mr. NADLER. Mr. Chairman?

Mr. COBLE. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I move to strike the requisite words.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I disapprove of this bill. I hope it is not enacted. I yield the balance of my time to the distinguished gentleman from California.

Mr. BERMAN. I thank the gentleman for yielding, and thank you, Mr. Chairman.

I'd like to make a couple of reactions to points that my friend from California, Mr. Issa, made. Putting in the context some comments the gentleman from Texas, Judge Gohmert, made earlier, because, as he always does, he got to the heart of what the concern is, the unstated concern of many on the other side of the aisle.

Mr. ISSA. I might note he's not a Ninth Circuit covered person.

Mr. BERMAN. He's a wise person. And it was about what he viewed as erratic decision-making and the substance of those decisions. Because I think that's what underlies all this. And I only point out the gentleman from Arizona, Mr. Renzi, made the same point on the floor after the sponsor of the bill, Mr. Simpson, had

argued this doesn't have anything to do with judicial philosophy or disagreements with decisions, it's all about judicial efficiency. Then the gentleman from Arizona, Mr. Renzi, took the floor and reminded us what it really is about. My favorite is the press release from my good friend from Alaska, Don Young, who favors the split. And he says, This is good for the State of Alaska because we will no longer be governed by adverse court decisions made for San Francisco and that way of life.

So my argument to my colleague from California is, at least if he had—on the other side of the aisle, if you have something against that way of life——

Mr. ISSA. I would suggest——

Mr. COBLE. Wait till he has yielded.

Mr. BERMAN. If you have something against that way of life, the new Ninth Circuit, without the leavening purposes of the judge from Alaska and the judge from Montana, you'll find that way of life more and more in the new split. That may be a reason for others to want to support this, but I want to watch the people from California who so disagree with the philosophy of the Ninth Circuit, watch those decisions after this.

Now, the gentleman from California, Mr. Issa, he touched on one important issue, that on its face superficially looks like could deal with the efficiency. There has been a drastic rise in appeals, for one reason and one reason only, and that's called immigration cases. And why did that happen? Because Attorney General Ashcroft decided, I'm going to address the backlog of immigration appeals at the Bureau of Immigration Appeals. And how is he going to address them? He's going to streamline them. And so he cut the number of judges in the BIA in half in order to reduce the backlog. The caseload so massively expanded that what you got were thousands of decisions were simply affirmances of initial decisions, without opinion.

Now, when a party gets an appeal judge inside the Department that says the lower—the bureaucrat's decision is affirmed without explanation, they and their lawyer think we'd better get this to the courts because we don't think that was the right decision. They don't explain their decision. One simple process would take care of the only judicial efficiency argument that seems legitimate in the context of justifying the split, and that is creating a meaningful immigration appeals court inside the Department, which will massively reduce the number of cases going to the Ninth Circuit—and, by the way, it won't just be California, it will be Arizona and the other border States as well. That one change is so much more important.

And this was a unilateral decision not done with the consent of Congress that had the impact, the consequences that were unforeseen. This Administration has a propensity for consequences that are unforeseen, but this one caused this massive increase in appeals to the Ninth Circuit.

So I would suggest focusing on that rather than the split would be a more sensible way to approach this.

Mr. COBLE. The question occurs on Mr. Berman's second amendment.

All in favor say aye?

Opposed, no?

It appears the nays have it.

Mr. BERMAN. Mr. Chairman, on that I ask for a rollcall.

Mr. COBLE. A rollcall having been requested on the Berman, Waters, Schiff, Lofgren and Sánchez amendment to the Issa amendment in the nature of a substitute. Those in favor, when their names are called, will answer aye. Those opposed, no. The clerk will call the roll.

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Hyde?

The CLERK. Mr. Hyde, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mr. Franks?

Mr. FRANKS. No.

The CLERK. Mr. Franks, no. Mr. Gohmert?

[No response.]

The CLERK. Mr. Conyers?

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye. Mr. Boucher?

[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Mr. COBLE. I've already voted no.
The clerk will report.
Are there others in the room wishing—the gentlelady from Florida?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye.
Mr. COBLE. The gentleman from North Carolina, Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Mr. COBLE. The gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. COBLE. The gentleman from Virginia, Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. COBLE. The gentleman from Texas, Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. COBLE. Are there others who wish to vote or change their vote? The clerk will report.
The CLERK. Mr. Chairman, there are 14 ayes and 21 noes.
Mr. COBLE. And the second-degree amendment fails.
Are there further second-degree amendments to the Issa amendment in the nature of a substitute?
Mr. BERMAN. Mr. Chairman?

Mr. COBLE. The gentleman from California, Mr. Berman.

Mr. BERMAN. Move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. BERMAN. I thank the gentleman. And this time I won't take the full 5 minutes. But I do want to make a couple of more points about this issue of the Ninth Circuit and cases overturned.

One of the arguments cited in favor of this split is the misperception that the Supreme Court reverses the Ninth Circuit an inordinate amount of time. But the Supreme Court only accepts about 80 cases per year. The Ninth Circuit disposed of more than 12,000 cases last year. This is not an appropriate grounds for restructuring a circuit. In addition, according to the conservative Center for Individual Freedom, the October 2002 term the Supreme Court reversed 75 percent of the Ninth Circuit cases it took. That seems like a large percentage, until you learn that the Supreme Court reversed 100 percent of the Fourth, Fifth, Eighth, and Tenth circuit decisions it took. The Supreme Court reversed about the same percentage as California in the Sixth and Second circuits.

The Supreme Court has actually reversed the Ninth Circuit less frequently than four other circuit and in about the same percentage of the cases as three other courts and the district courts as a whole. So this notion of Ninth Circuit decisions being reversed disproportionately doesn't hold water.

Caseloads on time to resolve cases: Ninth Circuit is in the middle of the pack. Many other circuits take much longer to decide these cases. For submitted cases it takes 1 month nationally compared with 10 days for the Ninth Circuit. The Sixth Circuit has the longest time to case disposition among the circuits. If delays in case disposition or efficiency were the keystone for splitting the circuits, we'd start with the Sixth.

To me—I'll just conclude by saying again, dealing with the problem of these immigration cases and having the vast majority of them resolved by a meaningful process inside the Bureau of Immigration Appeals will do the most important thing to reduce caseload in the Ninth Circuit, and providing the judgeships—four vacancies now; we're providing new judgeships for a court with four vacancies. Providing those vacancies and the new judgeships will eliminate all issues of inefficiency. That's the most positive thing you can do. By including the split of the Ninth Circuit in the bill, you end up killing the creation of new judgeships, because the Senate isn't going to pass it.

Mr. COBLE. The gentleman's time has expired.

Mr. LUNGREN. Mr. Chairman?

Mr. COBLE. The gentleman from California, Mr. Lungren, for what purpose do you seek recognition?

Mr. LUNGREN. Strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. I appreciate the statistics the gentleman from California has given us. My problem is I dealt with the Ninth Circuit for 8 years as an attorney general having more business before the Ninth Circuit than any other office in the country. And I can recall when they reversed 19 out of 21 times, 21 out of 22 times before the U.S. Supreme Court, most of those cases involving my office representing the State of California. So I don't know whether you're going to present to me that other circuits do a worse job. It

is tough to figure out how they do a worse job. We have one judge on the Ninth Circuit who is singularly the most reversed judge in the United States.

But the point is, look. I had Ninth Circuit judges come to me and say let's not break this up, we can handle it. As a matter of fact, we're going to change our mini en banc from 11 members to 15 members. That's the mini en banc. The whole en banc is 28 members. So now you have this unwieldy operation there just in terms of size.

The uncertainty that the gentleman suggests if we break it into two circuits is interesting, because we have that uncertainty now. I mean, it's a roll of the dice what three-judge panel you get, and then what mini en banc you're going to get, and then the possibility you might get a full en banc. Nobody else does that. Nobody else faces that in the entire United States. And if the arguments we keep hearing, that this is an example of judicial efficiency, we ought to just take all of the circuits in the United States and put them into huge circuit. Instead of a 15-panel mini en banc, we can have a 35-panel mini en banc using the same arguments that we're hearing from the judges of the Ninth Circuit.

And I know the arguments that we're not talking about here, about the philosophy and the ideology and the tipping point and all that sort of thing. I'm cognizant of that. That gives me pause, I might say. But in terms of efficiency and someone who actually worked with them for 8 years, I cannot understand why we say that it's more efficient to have this unwieldy operation than it would be to at least have a more confined operation that you would have under the break here.

The other dynamic is the gentleman from California keeps talking about the Senate. Let's talk about the House. Unless we have a break of the Ninth Circuit, we're not going to get a bill that has more judges. I mean, that's been the experience here.

Mr. COBLE. The gentleman's time has expired.

Without objection, the staff is directed to make technical and conforming changes.

Mr. BERMAN No, we have to have a vote on the bill.

Mr. COBLE. Oh, okay, yeah.

The question occurs on the motion to report the bill, H.R. 4093, favorably——

Mr. BERMAN. Have we adopted the substitute?

Mr. COBLE. Pardon?

Mr. BERMAN. Have we adopted the substitute?

Mr. COBLE. The question occurs on the amendment in the nature of a substitute—thank you, Howard—offered by the gentleman from California, Mr. Issa.

All in favor say aye?

Opposed, nay?

It appears the ayes have it. The ayes have it. And the staff—without objection, the staff is directed to make technical and conforming changes. All Members will be given 2 days——

Mr. BERMAN. Now we have to pass the bill.

Mr. COBLE. Pardon?

Mr. BERMAN. Mr. Chairman, we haven't voted on the bill yet.

Mr. COBLE. The question occurs on the motion to report the bill, H.R. 4903, favorably.

All in favor, say aye?
Opposed, nay?
It appears the ayes have it.
Mr. BERMAN. Mr. Chairman, on that I ask for a recorded vote.
Mr. COBLE. rollcall has been requested. When your name is called, please—all those in favor will vote aye; those opposed, nay. The clerk will call the roll.
The CLERK. Mr. Hyde?
Mr. HYDE. Aye.
The CLERK. Mr. Hyde, aye. Mr. Smith?
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Lungren?
Mr. LUNGREN. Aye.
The CLERK. Mr. Lungren, aye. Mr. Jenkins?
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]

The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no. Mr. Chairman?
Mr. COBLE. Aye.
The CLERK. Mr. Chairman, aye.
Mr. COBLE. Are there others in the room—the gentleman from Alabama?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. COBLE. Other Members who wish to vote or change their vote? The gentleman from California?
Mr. GALLEGLY. Mr. Chairman, with the passage of the Issa amendment, I cautiously vote aye.
The CLERK. Mr. Gallegly, aye.
Mr. COBLE. The gentlelady from California?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Mr. COBLE. Are there others who wish to vote or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 22 ayes and 12 noes.
Mr. COBLE. And the amendment in the nature of a substitute is approved.
Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating no amendments.
Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional, dissenting, supplemental, or minority views.

For the benefit of the Members of the Committee, we will break for lunch on or about 12:30 for about 30 minutes. And keep in mind, we will suspend when our bill is on the House floor.

[Intervening business.]

That concludes the markup. I thank everyone for their participation. Without objection, the markup is adjourned.

[Whereupon, at 6:22 p.m., the Committee was adjourned.]

## MINORITY VIEWS

While we support the additional judgeships provided for in titles I and II of H.R. 4093, we oppose title III of the bill. Title III [hereinafter "the Ninth Circuit split"] of the bill contains provisions that would split the Ninth Circuit federal court of appeals into a "new" Ninth Circuit composed of California, Hawaii, Guam and the Northern Mariana Islands; and a newly created Twelfth Circuit composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

The bill's proponents would have us believe that this bill is about addressing inadequacies in the administration of justice relating to the Ninth Circuit's size, delays in the case docket, consistency of the opinions and the reversal rate by the United States Supreme Court of Ninth Circuit decisions.[1] Indeed, the discussion should be about the efficiency and effectiveness of the Ninth Circuit, but, in actuality, it is not. Many proponents of the bill are motivated by political considerations[2] and have not even addressed the substantive issues related to this particular split in a hearing.[3]

The reality is that the Ninth Circuit split portion of the bill would accomplish little other than increasing delays in the docket, exacerbate consistency problems without guidance on proper precedent and expend huge start-up costs to split the Ninth Circuit.[4] As stated by Ms. Roxie Bacon, the past president of the Arizona State Bar,

> "No matter how you slice it, the result is less than the whole. Breaking up the Court does not save money; it eats it up. It

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[1] Press Release, Sensenbrenner Introduces Legislation Providing For Additional Federal Judgeships and a Realignment of the Ninth Circuit Court of Appeals, U.S. House of Representatives Committee on the Judiciary, October 20, 2005 (hereafter "Sensenbrenner Press Release").

[2] Press Release, Ensign Introduces Bill to Split Ninth Circuit Court, Thursday, June 23, 2005, *also available at http://ensign.senate.gov/media/pressapp/record.cfm?id=239479&&* (last visited November 1, 2005). These kinds of motivations are completely contrary to what the late Justice Byron White of the Supreme Court, clearly stated in the White Commission's report:

> "There is one principle that we regard as undebatable: It is wrong to realign circuits (or not realign them) and to restructure courts (or leave them alone) because of particular judicial decisions or particular judges. This rule must be faithfully honored, for the independence of the judiciary is of constitutional dimension and requires no less."

The Commission on Structural Alternatives for the Federal Courts of Appeals, Final Report (1998), submitted to the President & the Congress pursuant to Pub. L. No. 105–119, *also available at http://www.library.unt.edu/gpo/csafca/final/appstruc.pdf* (last visited November 1, 2005) (hereafter "The White Commission Report").

[3] Even Judge Andrew Kleinfeld, a proponent of the Ninth Circuit split, admitted in testimony before the Senate Committee on the Judiciary, Subcommittee on Administration Oversight and the Court, that "In my view, the better division is a three-way split and not the two-way split currently on the table." An amendment was offered at the Full Committee mark-up by Representative Berman to strike Title III that was defeated by a vote of 22–12.

[4] Statement of Judge Sidney R. Thomas, before Senate Judiciary Committee Subcommittee on Administrative Oversight and the Court, October 26, 2005 (Circuit Judge, Ninth Circuit)(hereafter 'Statement of Judge Thomas"). He stated:

> "Division of the Ninth Circuit at this time would have a devastating effect on our Court. It would increase delay in case processing substantially and would decrease access to justice. It would create unnecessary and expensive duplication of core functions, while substantially reducing vital services."

> does not foster efficiency but rewards duplications. And it is not necessary in order to cope with an oversized workload or bench, because neither is oversized. Most important, it retards the administration and delivery of justice, the serious and majestic purpose of our courts." [5]

In addition, the Ninth Circuit split would not solve the supposed problem of a high reversal rate at the Supreme Court because the bill does not address the actual possible reasons for this claimed high reversal rate, which is not supported by the statistics.[6] Because Supreme Court reversals affect only a miniscule number of cases, it cannot serve as a meaningful point of evaluation of judicial administration and is not particularly instructive about the structural division of a circuit court.[7]

The bill would only cause greater problems because the split proposed would not equitably divide the case load, but instead isolate California, in which the highest case load will still exist, into the new Ninth Circuit, which will have proportionately less judgeships to deal with its current case load.[8]

For this reason, the Ninth Circuit split is opposed by: (1) Judges—the large majority of the Ninth Circuit judges, including three Bush appointees, The Honorable Judge Bea, The Honorable Clifton and the Honorable Callahan;[9] (2) government officials—Gov. Arnold Schwarzenegger of California, former Governors Gray Davis and Pete Wilson, the former Governor of Washington, Gary Locke;[10] and (3) many legal groups—the American Bar Association and the overwhelming majority of state, local and federal bar associations.[11]

We oppose the current Ninth Circuit split as set out in title III because it is not supported by any evidence of need, it is opposed by all who should support it, and it does not address any of the alleged "needs" it is supposed to address. If evidence supported the allegations of lack of efficiency and efficacy in the Ninth Circuit; if

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[5] Roxie Bacon, *Retain the Ninth Circuit: An Efficient and Excellent Bench,* 42 ARIZ. ATT'Y 35 (September 2005).

[6] "The Ninth Circuit's rate of reversal by the U.S. Supreme Court is not relevant to how the court functions or is administered. Because the Supreme Court grants certiorari in so few cases (approximately 80 per year), a circuit reversal rate statistic is not a meaningful indicator of the quality of jurisprudence. In any event, the reversal rate of the Ninth Circuit for the last six years has been roughly equivalent to the national average. Although in 1996 the Court did have a reversal rate higher than the national average, that has not been the case since." Arguments for Retaining the Present Structure of the Ninth Circuit, *available at http://www.earthjustice.org/policy/judicial/pdf/oppose—circuit—split.pdf.* See also, *infra* 33, and accompanying text.

[7] Statement of Judge Thomas, *supra* note 4, at pp. 18–19.

[8] Statement of Judge Thomas, *supra* note 4, at p. 14; Bacon, *supra* note 5, at p 44. Specifically, he states:

> "The current proposals (a three-way split or a two-way split) yield fewer judges to carry the disproportionately heavy caseload in the remaining Ninth Circuit. Fox example, if the Ninth is split in two (S. 1296; H.R. 212), there would be 24 permanent judges and two temporary ones in the new Ninth, which would include California, Hawaii, Guam and the Northern Marianas. This new Ninth would have 74 percent of the judges, but 82 percent of the caseload, whereas the new Twelfth, with 14 judges and comprised of Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington, would have only 18 percent of the caseload but 26 percent of the judges.")

[9] *See* Letter to Senator Sessions on October 21, 2005 (hereafter "Letter to Sessions").

[10] Jeff Chomey, ALL-STARS ENLISTED TO STOP 9TH CIRCUIT SPLIT, The Recorder (April 20 2004), *also available at http://www.law.com/jsp/article.jsp?id=1082131844221#* (last visited November 1, 2005).

[11] *Id.*; see also Statement of Judge Alex Kozinski, before Senate Judiciary Committee Subcommittee on Administrative Oversight and the Court, pp. 3–4, October 26, 2005 (Circuit Judge, Ninth Circuit)(hereafter "Statement of Judge Kozinski").

it was backed by all who should support it; and if the proposed solutions and changes to the Ninth Circuit were feasible, we may have reached a different conclusion. The current evidence, however, necessitates the conclusion set out in these views: the Ninth Circuit should not be split.

A. THERE IS LITTLE SUPPORT TO SPLIT THE NINTH CIRCUIT AND PROPONENTS HAVE NOT DEMONSTRATED THE ADVISIBILITY OF SPLITTING THE CIRCUIT INTO TWO DISTINCT CIRCUITS.

Legislation that splits a circuit should be supported by in depth analysis and studies, yet the most current and relevant congressional study and report that has looked into the matter of splitting the Ninth Circuit concluded that that splitting the Ninth Circuit was impractical and unnecessary.[12] It pointed out that none of the proposals for splitting the Ninth Circuit would result in an acceptable or equitable number of appeals per judge or courts small enough to operate with the sort of collegiality envisioned by the Commission.[13] In fact, it determined that realignment into two (2) or more circuits would deprive the courts of the administrative advantages of its configuration, and would deprive the West and the Pacific seaboard of a means to maintain uniform federal law in the area.[14] It concluded, instead, that to improve consistency and coherence of the court's decisions, Congress should restructure the adjudicative function of the court of appeals into three smaller, regionally-based divisions, and it recommended a method for doing so.[15]

And though many of the proponents of the Ninth Circuit split cite to the Fifth Circuit split, history shows a marked difference between the current huge opposition to the Ninth Circuit split, and the nearly unanimous support that was behind the split of the Fifth Circuit.[16] This evidence *strongly* counsels against a Ninth Circuit split. In splitting the Fifth Circuit, Congress acted only when the judges and the lawyers of the region, speaking with a voice that was nearly unanimous, agreed that the split was nec-

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[12] The White Commission Report, *supra* note 2, at p. iii (taken from the "Appellate Structure: Findings & Recommendations In Brief" of the White Commission Report). Specifically, it stated:

> "Splitting the Ninth Circuit itself would be impractical and is unnecessary. As an administrative entity, the circuit should be preserved without statutory change."

[13] *Id.,* at p. 52 ("Moreover, it is impossible to create from the current Ninth Circuit two or more circuits that would result in both an acceptable and equitable number of appeals per judge and courts of appeals small enough to operate with the sort of collegiality we envision, unless the State of California were to be split between judicial circuits—an option we believe to be undesirable.")

[14] *Id.,* at p. 8–9.

[15] The White Commission Report proposed that the Ninth be organized into three regionally-based adjudicative divisions which would hear and decide all appeals from the district courts in the respective divisions as follows:

- *Northern Division*—istricts of Alaska, Idaho, Montana, Oregon, and Eastern and Western Washington.
- *Middle Division*—Districts of Northern and Eastern California, Guam, Hawaii, Nevada, and Northern Mariana Islands.
- *Southern Division*—Districts of Arizona and Central and Southern California.

Each regional division should have from seven to 11 active circuit judges. A majority should reside in the division, but some should serve for a term in a division other than where they reside to enhance inter-divisional consistency. *See* White Commission Report, *supra* note 2, at pp. 40–50.

[16] Arthur D. Hellman, *Dividing the Ninth Circuit: An Idea Whose Time Has Not Yet Come,* 57 MONT. L. REV. 261, 268–272 (1996).

essary.[17] Though a bill was introduced a short two months after a commission had thoroughly investigated a potential split of the Fifth Circuit, legislation was not enacted until several years thereafter.[18] One of the main reasons it took so long to enact Fifth Circuit split legislation was that the proposed division was strongly opposed by some members of the court, as well as by some lawyers' groups.[19] It was not until professional opinion supported, and a unanimously signed petition to Congress from the Circuit Council (of the old Fifth Circuit) showing nearly complete support, that any legislation was passed to split the Fifth Circuit.[20] The Fifth Circuit was split only after the following critical statements were registered as supporting the split: statements (1) from the bar associations of each of the six states affected, (2) from the magistrates of the Fifth Circuit, (3) from the district judges of the Fifth Circuit, (4) from the bankruptcy judges of the Fifth Circuit, (4) from the Federal Bar Association, and (5) from the Justice Department.[21]

Similarly, this same unanimity of professional opinion also characterized the one previous division of a circuit that took place in 1929, when Congress carved out the Tenth Circuit from the old Eighth.[22] By the time hearings were held on the old Eight Circuit division proposal, all of the judges of the existing Eighth Circuit and bar associations of the eight affected states had expressed their approval.[23]

This unanimity of professional opinion is noticeably lacking on the Ninth Circuit split. Legislation that greatly impacts the judiciary should have the support of the judiciary, and at a minimum, the support of the judges it will affect, and the attorneys who litigate in those courts.[24] Title III has no such support. The large majority of the Ninth Circuit judges oppose the split.

> "Advocates of circuit division have, of course, every right to put forth their ideas, whether in the form of legislation or otherwise. But their efforts exact a cost—the 'distractions' and 'guerilla warfare' that Judge O'Scannlain referred to. Perhaps at some time in the future the judges and lawyers of the Ninth Circuit will agree that the court of appeals is simply too large to operate effectively. They will then do what the judges and lawyers of the Fifth Circuit did two decades ago: they will abandon their opposition to division and ask Congress to act. Until that time, those who care about the Ninth Circuit Court of Appeals can serve it best by freeing the judges from the 'distractions' generated by legislative battles. This will allow the

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[17] *Id.* at 269 (citing Deborah J. Barrow & Thomas G. Walker, A COURT DIVIDED: THE FIFTH CIRCUIT COURT OF APPEALS AND THE POLITICS OF JUDICIAL REFORM (1988), and Arthur D. Hellman, *Deciding Who Decides: Understanding the Realities of Judicial Reform,* 15 LAW & SOC. INQUIRY 343 (1990)).

[18] Hellman, *supra* note 16, at 269.

[19] *Id.*

[20] *Id.*

[21] *Id.* (citing Arthur J. Stanley & Irma S. Russell, *The Political and Administrative History of the United States Court of Appeals for the Tenth Circuit,* 60 DENVER L.J. 119, 127 (1983)).

[22] *Id.* at 269–70.

[23] *Id.*

[24] Statement of Judge Kozinski, *supra* note 11, at p. 1. He stated:

> "Dividing a circuit should only take place when: (1) there is demonstrated proof that a circuit is not operating effectively; and (2) there is a consensus among the bench and bar and public that it serves that division is the appropriate remedy. Neither of those conditions exists today."

> judges to 'get back to judging'—and also to continue their impressive record of experimentation and innovation in the mechanisms and structures appellate justice." [25]

Furthermore, the state bar associations for the states of Arizona, California, Hawaii, Montana, Nevada, and Washington, as well as the bars of many of the county and city bar associations in California, such as Orange County, San Diego, San Francisco and Los Angeles, all oppose the split of the Ninth Circuit.[26]

Without the support, indeed the opposition, of the affected judges, state government officials and the leading legal groups in almost every one of the individual states currently included in the Ninth Circuit, it is an anathema that Congress would even contemplate splitting the Ninth Circuit in this way at this time.

B. THE NINTH CIRCUIT IS CURRENTLY EFFICIENT AND EFFECTIVE.

*1. The Actual Size of the Ninth Circuit is Irrelevant*

The size of the Ninth Circuit has not changed in almost a hundred years. According to Judge Thomas, the proposed Ninth Circuit split has no geographic rationality:

> "The 'stringbean circuit' proposal (Alaska, Washington, Oregon, Idaho, Montana, Nevada, and Arizona) lacks geographic coherence. Central administration in either Phoenix or Seattle would prejudice the attorneys not located in those regions. It would also mean that many attorneys would have a greater distance to travel to the circuit headquarters." [27]

According to Judge Thomas, a Ninth Circuit split will disrupt Ninth Circuit jurisprudence.[28] He says this will occur, not only because of the development of federal law, but because most of the states which form the Ninth circuit have strong jurisprudential ties to California.[29]

Furthermore, to ensure "coherence" in opinions the Ninth Circuit has developed a sophisticated issue-tracking system that enables all judges to remain current with decisions by other panels on like issues. This system will address and improve the consistency and coherence of the Ninth Circuit's decisions. Therefore, proponents' claim that the size of the Ninth Circuit may cause inconsistency in law because it prevents the sort of collegiality among judges that leads to consistent legal opinions, has been addressed. Moreover, with the advent of all other kinds of new communication technologies, the impact of size and distance on the Ninth Circuit's efficiency has been mitigated.

Proponents of the Ninth Circuit split also forget that out of the over 15,000 appeals filed in the Ninth Circuit—over 10,000 of them

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[25] Arthur D. Hellman, *Getting it Right: Panel Error and En Banc Process in Ninth Circuit Court of Appeals,* 34 U.C. DAVIS L. REV. 425 (2000–2001).

[26] See Bacon, *supra* note 5, at p. 46.

[27] Statement of Judge Thomas, *supra* note 4, at p. 32.

[28] *Id.*

[29] *Id.* According to Judge Thomas:

> "California adopted the Field Code in 1850, followed by Oregon and Washington in 1854; Nevada in 1861; and Arizona, Idaho and Montana in 1864. In addition, all the other Ninth Circuit states have adopted significant aspects of California law, and rely on California judicial construction."

are in California alone.[30] Therefore, any circuit that includes all of California will still have the largest number of judges, appeals and serve the largest population. Furthermore, the specific split described in title III, where California is coupled with Hawaii, Guam, and the Northern Mariana Islands does not resolve many of the issues that have been raised as the reason for splitting the Ninth Circuit due to its size for example, the cost of travel for the judges or litigants,[31] or the number of necessary judges. In addition, while the Ninth Circuit covers the Western states, there is a benefit to maintaining its current geographical boundaries, since many states economies are enmeshed with the California market and would benefit from similar law.[32]

Another unfounded complaint made by the proponents of title III is that due to the Ninth Circuit's size, the three (3) judge panels rarely involve the same three (3) judges. It is argued by proponents of a split that the number of possible permutations of panels leads to inconsistent opinions. However, it can also be said that the shifting nature of panels contributes to the objectivity of decision-making, and makes it difficult for any one bias or philosophy to predominate.

In addition, the Ninth Circuit has already remedied the issue of the limited use of the *en banc* function by the Ninth Circuit, which supporters of the split claim results in a high reversal rate in the Supreme Court and frustrates the development of more stable circuit law. Recently, Chief Judge Mary M. Schroeder announced a rule amendment that has been adopted that increases the size of *en banc* courts convened by the Ninth Circuit to resolve important issues of law within the circuit. The amendment will increase the size of *en banc* courts from 11 to 15 judges, constituting a majority of the court's 28 authorized judges.[33]

*2. The Ninth Circuit is Effective at Docket Management*

> "Some of us took to the Bench with trepidation that the size of the Circuit and volume of cases would result in inefficiencies; that the number of judges would result in lack of collegiality. . . . Regardless of our views before joining the Ninth Circuit, all of have been impressed with the efficiency

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[30] The source of the statistic has been derived from the Annual Reports of the Director of the Administrative Office, U.S. Courts, Tables B, B1, 4 and 5. See also *http://www.uscourts.gov/judbus2004/contents.html.*

[31] In Sensenbrenner's Press Release, which introduced H.R. 4093, part of his reasoning for splitting the Ninth Circuit is "[a] court that is too far removed from those whose disputes it is responsible for adjudicating imposes severe costs on those who must appear before it." See *supra* note 1.

[32] Bacon, *supra* note 5, at p. 36. In arguing that a Ninth Circuit split which divides California and Arizona would be detrimental to Arizona she states:

> "[D]elivering justice has been pushed aside by the pettiest politics. What the breakup would do is . . . separate Arizona from its closest economic neighbor, California, creating highly prejudicial barriers to the growth of Arizona's industries and commerce."

This is also echoed by Joseph Russoniello, Senior Counsel to the law firm Cooley Godward LLP, in San Francisco, California, who testified at the Senate Judiciary Committee testimony on October 26, 2005, stating that,

> ". . . over the years I have seen more commonality of interest among the states of the Ninth Circuit then division. Each has a natural beauty that it tries to preserve and balance with economic interests. Tourism is a growth industry common to all."

Statement of Joseph Russonieollo, before Senate Judiciary Committee Subcommittee on Administrative Oversight and the Court, October 26, 2005.

[33] Press Release, United States Courts for the Ninth Circuit, October 1, 2005.

> with which the court dispatches its business and our procedures for maintaining a uniform federal jurisprudence in our Circuit. . . . It is all too easy to look at the Ninth Circuit's size and case load from the outside and summarily conclude changes are needed. But take it from some recent arrivals who are on the inside its administrative efficiency is second to none.[34]

Proponents claim that the Ninth Circuit has the greatest number of appeals filed in 2004 and the highest percentage increase in appeals filed over the past four years.[35] However, this is largely as a result of the monumental increase in the number of immigration case filings. Currently, 45% of the appeals handled by the Ninth Circuit are new immigration case filings.[36] In part, this problem was created when then Attorney General Ashcroft decided to streamline the backlog of immigration cases at the Board of Immigration Appeals.[37] As a result the number of immigration cases coming to the Ninth Circuit has increased by the thousands in a very short period of time. Even so, the Ninth Circuit has been able to dispose of a large majority of these cases either before briefing due to jurisdictional defects, or through procedural efficiencies due the court's issue identification system and submission program.[38]

Furthermore, statistics show that the Ninth circuit is actually in the middle of the pack with regard to the number of appeals handled annually. The Ninth Circuit handled about 207 appeals per circuit judge from October 2000 through September 2001. Though this may sound like a lot, it was still less then the Fourth, Fifth, Seventh, and Eleventh Circuits; with the Fifth Circuit handling almost twice as many appeals per judge. Furthermore, though supporters of the Ninth Circuit split point out that the Ninth Circuit ranks at or near the bottom in time from filing a case in the district court to the final appellate disposition, they fail to raise the fact that the Ninth Circuit is among the fastest circuits once a case is argued or submitted to a panel. It takes the Ninth Circuit 1.4 months to file a decision following argument, as opposed to the national average of 2.1 months. For submitted cases, it takes 1 month nationally, as compared with ten (10) days it takes the Ninth Circuit to dispose of the case. It is actually the Sixth Circuit that has

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[34] See Letter to Sessions, *supra* note 9. Note that the three (3) judges signing the letter were all recent appointees to the Ninth Circuit by President Bush.

[35] See Statement of Chief Judge Mary M. Schroeder, before Senate Judiciary Committee Subcommittee on Administrative Oversight and the Court, p. 2, October 26, 2005 (Chief Circuit Judge, Ninth Circuit). See also Statement of Judge Thomas, *supra* note 4, at pp. 2–3, wherein Judge Thomas stated:

> "The Circuit would be current in its workload, except for an unusual and unanticipated circumstance: the unprecedented growth in immigration administrative petitions for review during the last several years. . . . The present caseload challenge is the enormous increase in immigration petitions for review."

[36] Statistics show that the District Court filings have remained the same. The source of the statistic has been derived from the AO Appeals Statistical Tables B and B3–B, and the Annual Reports of the Director of the Administrative Office, U.S. Courts, Tables B, B1, 4 and 5. See also *http://www.uscourts.gov/judbus2004/contents.html.*

[37] Statement of Judge Thomas, *supra* note 4, at p. 3. According to Judge Thomas,

> "The increase in immigration caseload stemmed from a decision of the Attorney General to eliminate the backlog of 56,000 cases that existed in the Board of Immigration Appeals. That decision resulted in the resolution of tens of thousands of cases by the BIA in a matter of months. Over half of the petitions for judicial review from those cases were venued in the Ninth Circuit."

[38] Statement of Judge Thomas, *supra* note 4, at pp. 3–4.

the longest time to case disposition among the circuits. Therefore, if delays in case disposition, or "efficiency," were the keystone for splitting circuits, the proponents of title III should start with the Sixth Circuit. Plus, any complaints about delay are in actuality an indication of unfulfilled judgeships, and the need for the additional judgeships that are contained in titles I and II of the current bill, and supported by the minority.

*3. The Ninth Circuit's Reversal Rate is Consistent with Other Circuits'*

Compared to other circuits, the present Ninth Circuit reversal rates are not appreciably higher than other circuits, which sometimes have higher reversal rates, yet are not the target of a bill to split their circuit. In fact, in 2005, statistics show that in the eyes of litigants, who appealed a total of 1,007 cases, and the Supreme Court, the Ninth Circuit got it "right" 98.5% of the time.[39]

Proponents of the split ignore the fact that their legislation will have no effect on the fact that the reversal rates have much to do with the kinds of industries and resulting legal questions that are unique to the Ninth Circuit region.

In addition, according to the conservative Center for Individual Freedom, in the October 2002 Term, the Supreme Court reversed only 75% of the Ninth Circuit cases it took. When compared to other circuits, this is not a large percentage: the Supreme Court reversed 100% of the Fourth, Fifth, Eighth and Tenth Circuit decisions it took. Furthermore, the Supreme Court actually reversed 71% of the Sixth Circuit decisions, and 67% of the Second and Seventh and District Court decisions. Thus the Supreme Court actually reversed the Ninth Circuit less frequently than four (4) other circuits on a percentage basis, and in about the same percentage of the cases as three (3) other circuits, and the District Courts as a whole.

C. THE NINTH CIRCUIT SPLIT IS COSTLY, BURDENSOME AND WILL ONLY CREATE AMBIGUITY IN THE LAW.

As defenders of the current Ninth Circuit, we believe that a split will still produce at least one circuit (that which includes California) which will generate an enormous workload. Splitting the circuit will require further layoffs of experienced staff so that the new circuits can hire inexperienced replacements at different locales. Two circuits, with their duplicate headquarters, clerk's offices, procurement divisions and other administrative functions, will force judges to spend much more time feeding the administrative beast rather than deciding cases. Litigants will have to wait even longer for their cases to be resolved.

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[39] Bacon, *supra* note 5, at p. 36. Ms. Bacon made the following statement:

"In 2005, the Ninth Circuit took in 15,392 cases. In 1,007 of those cases, 6.5 percent, the losing side sought Supreme Court review. A total of 94.5 percent of those who lost their appeal chose not to ask the high court to reverse. Of those who did seek review, the Supreme Court granted it in 19 cases, or 1.9 percent. Because it only takes four votes to accept review, the Supreme Court's review rate is itself a statement of agreement with the vast majority of the Ninth Circuit's work. Finally, the Supreme Court reversed the Ninth in 16 cases, or 1/10 of 1 percent of the Ninth's annual caseload. And even if you focus solely on the 1,007 cases in which review was sought, the 'reversal' rate is about 1.5 percent, meaning that even in the eyes of litigants and the Supreme Court, the Ninth Circuit got it 'right' 98.5 percent of the time."

In addition, the cost of splitting the Ninth Circuit is exorbitant.[40] Construction of new courthouses will be required, leaving present buildings underused. This financial outlay would be further exacerbated by the fact that the Judicial Conference of the United States just requested $65,596,000 to remedy the federal courts situation caused by Hurricanes Katrina, which has resulted in the closing of the U.S. Courthouse buildings in New Orleans as well as the federal court houses in Hattiesburg and Gulfport, Mississippi.[41]

At present, the cost estimates developed by the Administrative Office of the United States Courts ("AO") for implementation of H.R. 4093 calculate the anticipated *start up* costs (which do not include recurring, annual, duplicated costs) in the double-digit millions of dollars range.[42] These costs estimates were developed with input from the General Services Administration ("GSA") and court staff in the Ninth circuit.

As proposed by the Majority, to implement the split of the Ninth Circuit by creation of a new Twelfth circuit headquartered in Phoenix, Arizona, without new judgeships, the total estimated *start up* costs will be $94,698,936. This $94 million figure does not even begin to take into account the *duplicated costs* that will also be an *annual consequence* of the unnecessary creation of a new Twelfth Circuit. In addition, this $94 million figure does not account for the *additional staff space* that would be required to deal with the geographical configuration that has been proposed in H.R. 4093, which is new and different from prior proposed splits. As a result, the $94 million dollar figure, which does not include the duplicated, recurring, annual costs, would also need to be increased for the additional staff space that would be required.

Without taking these additional, unaccounted for, estimated costs, the financial expenditure being pushed by the Majority is, nonetheless, exceptionally high. If the Majority's split into a new Ninth and Twelfth includes the seven (7) additional judgeships, headquartered in Phoenix, the estimated *start up* costs for the new Twelfth Circuit will increase by another $1,156,236.00. In addition, the *duplicated costs* of having a new Twelfth Circuit in Phoenix will be $10,257,784.00, *annually,* without the seven (7) additional judgeships, and $15,914,180.00 with the seven (7) additional judgeships. Therefore, at the close of first operating year of the new

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[40] Cost estimates have been put together by the Administrative Office of the Courts, in cooperation with the General Services Administration, and by the Congressional Budget Office. Both estimates show that the Ninth Circuit split costs would be exorbitant. Administrative Office of the Courts, Ninth Circuit Legislation Costs Estimate (October 24, 2005)(hereafter "AO's Cost Estimates Report"); Administrative Office of the Courts, Incremental Costs Associated with HR 4093 (October 24, 2005)(hereafter "AO's Incremental Costs Report").

[41] Letter to The President from the Judicial Conference of the United States, by Leonidas Ralph Mecham, Secretary, dated September 16, 2005. Affected operations include the Fifth Circuit Court of Appeals as well as the district and bankruptcy courts, and probation, pretrial services and federal public defender offices in the districts of Louisiana Eastern and Mississippi Southern. As a result, it was necessary for the judiciary to move court operations and relocate court employees to locations outside of the affected areas including: Houston, Texas; Baton Rouge, Houma and Lafayette, Louisiana; and Hattiesburg and Jackson, Mississippi.

[42] Both reports calculate the estimated costs with headquarters in either Phoenix, Arizona, or Seattle, Washington; and with new judgeships and without new judgeships. See AO's Cost Estimates Report and AO's Incremental Costs Report, *supra* note 4. All of the following figures are based on the submission of the Administrative Office of the Courts estimation of costs, or the Congressional Budget Office cost estimate. Congressional Budget Office Cost Estimate, Reconciliation Recommendations of the House Committee on the Judiciary (October 28, 2005)(as approved by the House Committee on the Judiciary on October 27, 2005)(hereafter "CBO's Cost Estimate Report").

Twelfth Circuit in Phoenix, the total bill for the Ninth Circuit split proposed by the Majority will be between $106,112,956 and $111,769,352.

These figures contrasts starkly with the costs required to implement the only truly necessary changes, supported by the Minority, which will address the legitimate concerns that have been raised about the Ninth Circuit. To implement the additional seven (7) judgeships in the Ninth Circuit, the estimated start up costs will be $1,156,236, and the annual, recurring costs will be $5,656,396, which will include the judges' and chambers' staffs' salaries, operating expenses for the new judges and their chambers, and courtroom security. The start up costs will be in the nature of the expenses to being operation of the new courts, the necessary information technology and telecommunications equipment, and security needed while implemented. There are no estimates for space and facility costs.

The Congressional Budget Office ("CBO") also provided estimated costs for new 12 new circuit judgeships, but also included the 56 new district court judgeships, and 25 new bankruptcy judgeships.[43] In the numbers provided, the CBO estimated costs that fall outside of the Ninth Circuit split, and the CBO did not provide "estimate the cost of new office space for the new Twelfth Judicial Circuit, because the legislation does not specify where the new court would be located." Regardless, application of the costs estimated by the CBO to realities of the Ninth Circuit split proposed by the Majority leads to the same conclusion: the cost of splitting the Ninth Circuit will be excessive.

The fact of the matter is the split proposed in title III will not equalize the caseload, but will in fact increase the caseload while at the same time lowering the number of judges available to handle the increased load. Title III will require 72% of the caseload to be handled by less than 60% of the Ninth Circuit judges. Under the House bill, the new Ninth Circuit, with California, Hawaii, Guam, and the Northern Mariana Islands, would have 407 cases per circuit judge. That is much more than the new Twelfth Circuit, of Nevada, Arizona, Idaho, and Montana, which would have 280 cases per circuit judge.

Furthermore, title III does nothing to address the fact that there are still four (4) vacancies in the Ninth Circuit. Only one nomination has been made to fill one (1) of the four (4) vacancies, yet the complaints of delays are not being addressed by this legislation through filing of the four (4) vacant judgeships, one of which has been vacant for more than five (5) years.

Splitting the Ninth Circuit would produce incredible legal uncertainty within the states of the newly created circuit. It risks seriously disrupting the administration of justice because the status of the law would be unclear in those Western states in both the new Ninth Circuit and the new Twelfth circuit. People and businesses make decisions with an eye toward legal consequences, so they need a clearly established body of law. Today, a Ninth Circuit decision is binding in nine Western states. After the split, a decision of the new Ninth Circuit would leave the law unclear in the seven

[43] CBO's Cost Estimate Report, *supra* note 42.

(7) states of the Twelfth circuit. To get the law settled for all these states, the same issue would have to be decided by the one new circuit, which could take years. More circuits also mean more conflicts in the law, increasing the burden on the Supreme Court to set matters straight.

CONCLUSION

In conclusion, the proposed legislation contained in title III of H.R. 4093 which realigns the Ninth Circuit will only create further problems without addressing the concerns that are claimed to be the reason for this section of the bill. The Ninth Circuit currently operates in an efficient and effective manner. Title III will not address the alleged size concerns, efficiency issues, consistency problems or reversal rate because it does not contain provisions that address the supposed problems in the Ninth Circuit. The Congress has never before split a circuit over the advice of judges that adjudicate in that circuit or the bar associations that practice before the circuit. The worst response for Congress to take to address judicial decision they do not like is to alter the ability to effectively and efficiently administer justice in that circuit.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
RICK BOUCHER.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
ANTHONY D. WEINER.
ADAM B. SCHIFF.
LINDA T. SÁNCHEZ.
CHRIS VAN HOLLEN.
DEBBIE WASSERMAN SCHULTZ.

## ATTACHMENTS

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

October 25, 2005

Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein:

I write in response to your request for updated staffing estimates and cost estimates related to the implementation of S. 1845 and H.R. 4093 - legislation that proposes dividing the Ninth Circuit into two circuits. Enclosed are several tables with data on judgeships and staff required under each bill and estimates of one-time start-up and recurring costs. The tables break out the cost of the seven additional judgeships recently recommended by the Judicial Conference of the United States for the Ninth Circuit that are included in both bills. Since H.R. 4093 did not specify a location for the new Twelfth Circuit headquarters, the charts also include costs for locating the circuit in Seattle, which had been identified in previous legislation.

The cost estimates were developed by the Administrative Office, based on a format and content originally developed in 2004 with input from the court staff in the Ninth Circuit and the General Services Administration (GSA), updated to reflect inflationary changes. The staff estimates are based upon assumptions and staffing models used for all courts and administered by the Administrative Office and are stated in current costs. Should the underlying assumptions prove not to be exact, the costs would need to be revised accordingly.

Footnotes in several tables indicate that the estimated building, renovation, and recurring rent charges are the same as originally developed and presented to your office in May 2004. This new legislation modifies the configuration of States within each circuit and results in increased numbers of staff required in the new Twelfth Circuit. There was not time for the Administrative Office staff to work with GSA to update its figures, but additional staff space would be required under either bill.

If you have any questions or need further information, please feel free to contact Cordia Strom, Assistant Director for Legislative Affairs, at 202-502-1700.

Sincerely,

Leonidas Ralph Mecham
Director

cc: Honorable Arlen Specter, Chair, Senate Judiciary Committee
Honorable Patrick Leahy, Ranking Democrat, Senate Judiciary Committee
Honorable Jeff Sessions, Chair, Subcommittee on Administrative Oversight and the Courts
Honorable Charles E. Schumer, Ranking Democrat, Subcommittee on Administrative Oversight and the Courts
Honorable Mary Schroeder, Chief Judge, U.S. Court of Appeals for the Ninth Circuit
Cathy Catterson, Clerk, U.S. Court of Appeals for the Ninth Circuit
Greg Walters, Circuit Executive, U.S. Court of Appeals for the Ninth Circuit

# Ninth Circuit Legislation Overview

## S 1845 / HR 4093 - Twelfth Circuit HQ in Phoenix

| Circuit | States | Estimated Filings | % of Total | Judges Authorized in Bill [1] | % of Total | Non-Chambers Staff | Cost Without New Judgeships: Staffing & Operations Recurring | Staffing & Operations Start-up | Space & Facilities [2] Recurring | Space & Facilities [2] Start-up | Total Cost Recurring | Total Cost Start-up |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 9th | California | 10,985 | | 21 | | | | | | | | |
| | Guam | 34 | | 0 | | | | | | | | |
| | Hawaii | 247 | | 1 | | | | | | | | |
| | N. Mariana | 9 | | 0 | | | | | | | | |
| | **Subtotal** | **11,275** | **72%** | **22** | **63%** | **301** | | | | | | |
| 12th | Alaska | 136 | | 1 | | | | | | | | |
| | Arizona | 1,195 | | 3 | | | | | | | | |
| | Idaho | 161 | | 2 | | | | | | | | |
| | Montana | 355 | | 1 | | | | | | | | |
| | Nevada | 827 | | 2 | | | | | | | | |
| | Oregon | 638 | | 2 | | | | | | | | |
| | Washington | 1,130 | | 2 | | | | | | | | |
| | **Subtotal** | **4,442** | **28%** | **13** | **37%** | **160** | | | | | | |
| **Total** | | **15,717** | | **35** | | **461** | **$3,451,534** | **$7,498,436** | **$6,806,250** | **$87,200,500** | **$10,257,784** | **$94,698,936** |
| **Net New Staff** | | | | | | **40** | | | | | | |

## HR 4093 - Twelfth Circuit HQ in Seattle

| Circuit | States | Estimated Filings | % of Total | Judges Authorized in Bill [1] | % of Total | Non-Chambers Staff | Cost Without New Judgeships: Staffing & Operations Recurring | Staffing & Operations Start-up | Space & Facilities [2] Recurring | Space & Facilities [2] Start-up | Total Cost Recurring | Total Cost Start-up |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 9th | California | 10,985 | | 21 | | | | | | | | |
| | Guam | 34 | | 0 | | | | | | | | |
| | Hawaii | 247 | | 1 | | | | | | | | |
| | N. Mariana | 9 | | 0 | | | | | | | | |
| | **Subtotal** | **11,275** | **72%** | **22** | **63%** | **301** | | | | | | |
| 12th | Alaska | 136 | | 1 | | | | | | | | |
| | Arizona | 1,195 | | 3 | | | | | | | | |
| | Idaho | 161 | | 2 | | | | | | | | |
| | Montana | 355 | | 1 | | | | | | | | |
| | Nevada | 827 | | 2 | | | | | | | | |
| | Oregon | 638 | | 2 | | | | | | | | |
| | Washington | 1,130 | | 2 | | | | | | | | |
| | **Subtotal** | **4,442** | **28%** | **13** | **37%** | **160** | | | | | | |
| **Total** | | **15,717** | | **35** | | **461** | **$3,451,534** | **$7,498,436** | **$4,032,119** | **$5,161,129** | **$7,483,653** | **$12,659,565** |
| **Net New Staff** | | | | | | **40** | | | | | | |

[1] Both bills add 7 new judgeships to the Ninth Circuit; current judgeships of 28 plus 7 new results in a total of 35 judgeships (22 in the Ninth and 13 in the Twelfth).
[2] Start-up costs with Phoenix HQ scenario are higher than a Seattle HQ scenario, due mainly to the construction costs associated with a new courthouse.

Prepared 10/24/05

# NINTH CIRCUIT LEGISLATION COST ESTIMATE
## (calculated with & without seven judgeships requested by the Ninth Circuit)

### S 1845 / HR 4093 (2-way Split) - 12th Circuit HQ in Phoenix

| Cost Category | With New Judgeships | | Without New Judgeships | |
|---|---|---|---|---|
| | Annual Recurring Costs | Start-Up Costs | Annual Recurring Costs | Start-Up Costs |
| Judges and Chambers Staff Compensation [1] | $ 4,435,306 | $ - | $ - | $ - |
| Court Support Staff Compensation [1] | $ 2,941,233 | $ 3,065,100 | $ 2,941,233 | $ 3,065,100 |
| Operating Expenses | $ 1,116,117 | $ 1,883,397 | $ 379,790 | $ 1,326,715 |
| Information Technology & Telecommunications | $ 130,511 | $ 3,529,024 | $ 130,511 | $ 3,106,621 |
| Space and Facilities [2] | $ 6,806,250 | $ 87,200,500 | $ 6,806,250 | $ 87,200,500 |
| Court Security (Courtroom and Chambers) | $ 484,763 | $ 177,151 | $ - | $ - |
| **Total Additional Costs** | **$ 15,914,180** | **$ 95,855,172** | **$ 10,257,784** | **$ 94,698,936** |

### HR 4093 (2-way Split) - 12th Circuit HQ in Seattle

| Cost Category | With New Judgeships | | Without New Judgeships | |
|---|---|---|---|---|
| | Annual Recurring Costs | Start-Up Costs | Annual Recurring Costs | Start-Up Costs |
| Judges and Chambers Staff Compensation [1] | $ 4,435,306 | $ - | $ - | $ - |
| Court Support Staff Compensation [1] | $ 2,941,233 | $ 3,065,100 | $ 2,941,233 | $ 3,065,100 |
| Operating Expenses | $ 1,116,117 | $ 1,883,397 | $ 379,790 | $ 1,326,715 |
| Information Technology & Telecommunications | $ 130,511 | $ 3,529,024 | $ 130,511 | $ 3,106,621 |
| Space and Facilities [2] | $ 4,032,119 | $ 5,161,129 | $ 4,032,119 | $ 5,161,129 |
| Court Security (Courtroom and Chambers) | $ 484,763 | $ 177,151 | $ - | $ - |
| **Total Additional Costs** | **$ 13,140,049** | **$ 13,815,801** | **$ 7,483,653** | **$ 12,659,565** |

### Cost of Seven Judgeships

| Cost Category | Annual Recurring Costs | Start-Up Costs |
|---|---|---|
| Judges and Chambers Staff Compensation [1] | $ 4,435,306 | $ - |
| Court Support Staff Compensation [1] | $ - | $ - |
| Operating Expenses | $ 736,327 | $ 556,682 |
| Information Technology & Telecommunications | $ - | $ 422,403 |
| Space and Facilities [2] | $ - | $ - |
| Court Security (Courtroom and Chambers) | $ 484,763 | $ 177,151 |
| **Total Additional Costs** | **$ 5,656,396** | **$ 1,156,236** |

[1] Compensation costs based on actual January 2005 salary levels and assume a 1.9 percent COLA for judges and a 3.1 percent raise for chambers and court staff in January 2006. All other costs, except Space and Facilities, assume a 2% increase over FY 2005.

[2] S 1845 specifies that Phoenix will be the Twelfth Circuit headquarters; HR 4093 does not specify a place for headquarters, so an additional scenario was done assuming Seattle as Twelfth Circuit headquarters. Start-up and recurring costs are those estimated by GSA in May 2004 for prior Ninth Circuit split legislation and have not been inflated for FY 2005-2006. Additionally, both S 1845 and HR 4093 result in at least 40 additional staff in the Twelfth Circuit than were included in the May 2004 estimate. A reassessment of space requirements for the Phoenix and Seattle courthouses would be required and would increase the cost.

Prepared 10/24/05

## Overview of Court of Appeals' Judges & Staffing - FY 2006 - S 1845 / HR 4093 Scenarios

| | 1st Circuit | 2nd Circuit | 3rd Circuit | 4th Circuit | 5th Circuit | 6th Circuit | 7th Circuit | 8th Circuit | S1845 / HR4093 9th | S1845 / HR4093 12th | 10th Circuit | 11th Circuit | DC Circuit | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| # of Judgeships (1) (Court of Appeals only) | 6 | 13 | 14 | 15 | 17 | 16 | 11 | 11 | 22 | 13 | 12 | 12 | 12 | **174** |
| % of Total Judgeships | 3% | 7% | 8% | 9% | 10% | 9% | 6% | 6% | 13% | 7% | 7% | 7% | 7% | |
| Judge Formula # (2) | 9 | 30 | 18 | 21 | 41 | 22 | 14 | 15 | 49 | 19 | 12 | 29 | 12 | **291** |
| % of Total Judges | 3% | 10% | 6% | 7% | 14% | 8% | 5% | 5% | 17% | 7% | 4% | 10% | 4% | |
| Senior Judges (1) (3) | 4 | 11 | 9 | 1 | 2 | 9 | 3 | 10 | 13 | 10 | 7 | 6 | 3 | **88** |
| # of Staff Attorneys Full Formula (1) | 20.0 | 53.3 | 35.8 | 42.2 | 72.0 | 41.2 | 31.2 | 30.8 | 83.4 | 36.9 | 26.5 | 57.5 | 18.6 | **549.4** |
| % of Total Staff Attorneys | 4% | 10% | 7% | 8% | 13% | 7% | 6% | 6% | 15% | 7% | 5% | 10% | 3% | |
| # of Clerk's Staff Full Formula (1) | 30.9 | 76.8 | 54.3 | 73.7 | 103.2 | 60.4 | 47.8 | 46.3 | 129.6 | 63.9 | 40.7 | 85.1 | 27.0 | **839.7** |
| % of Total Clerk's Staff | 4% | 9% | 6% | 9% | 12% | 7% | 6% | 6% | 15% | 8% | 5% | 10% | 3% | |
| # of BAP Clerks Full Formula (1) | 0.7 | | | | | 0.9 | | 0.7 | 5.6 | 3.8 | 2.9 | | | **14.6** |
| % of Total BAP Clerks | 5% | | | | | 6% | | 5% | 38% | 26% | 20% | | | |

**Sources of data:**

(1) 2006 ACCAD Staffing Formulas for each Appellate Unit. (Includes 4% productivity adjustment - estimated new circuits at same level.)

(2) Appellate Court and Circuit Administration Division-FY 2006 Judgeship Calculation For Staffing Formulas.

(3) Number of Senior judges certified for staff.

Prepared 10/24/05

## Appellate Caseload & Number of Judges
## S 1845 / HR 4093 Scenario

| State | Total Filings [1] | % of Total | | Appellate Judges [2] | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | % of Total | |
| | | | | Current Authorized | Authorized in Bill | Current Authorized | Authorized in Bill |
| California [3] | 10,985 | | | 14 | 21 | | |
| Guam | 34 | | | 0 | 0 | | |
| Hawaii | 247 | | | 1 | 1 | | |
| N. Mariana | 9 | | | 0 | 0 | | |
| **Total-New 9th Circuit** | **11,275** | **72%** | | **15** | **22** | **54%** | **63%** |
| Alaska | 136 | | | 1 | 1 | | |
| Arizona | 1,195 | | | 3 | 3 | | |
| Idaho | 161 | | | 2 | 2 | | |
| Montana | 355 | | | 1 | 1 | | |
| Nevada | 827 | | | 2 | 2 | | |
| Oregon | 638 | | | 2 | 2 | | |
| Washington | 1,130 | | | 2 | 2 | | |
| **Total-12th Circuit** | **4,442** | **28%** | | **13** | **13** | **46%** | **37%** |
| **Total-Current 9th Circuit** | **15,717** | | | **28** | **35** | | |

[1] Source: Total Ninth Circuit appeals by case type from Table B-3 for 12-months ended 6/30/05 distributed by state based on state distributions obtained from AIMS for 12-months ended 6/30/05.

[2] Adding Senior judges has no significant impact on the percentage of total.

[3] Currently, BIA appeals in the 9th Circuit account for 41% of total filings. Eighty-eight percent of BIA appeals are filed in California.

Prepared October 24, 2005

## INCREMENTAL COSTS ASSOCIATED WITH HR 4093 - HQ in SEATTLE

24-Oct-05

| | | | | | |
|---|---|---|---|---|---|
| 1 | **HR 4093** | | | ~~New Judgeships~~ | - |
| 2 | | | | ~~New Chambers Staff~~ | - |
| 3 | **(All salary information based on Projected January 2006 salary levels)** | | | New Court Support Staff | 40 |
| 4 | | | | Total 12th Court Supp. Stf | 160 |
| 5 | | | | CIRCUIT | CIRCUIT |
| 6 | | Unit Cost | Quantity | ANNUAL RECURRING | START-UP |
| 7 | **Salaries and Benefits of Circuit Judges ($175.1K Salary + 9.7% Benefits)** | $ 192,085 | - | $ - | $ - |
| 8 | **SUBTOTAL, JUDGES SALARIES AND BENEFITS** | **$ 192,085** | | **$ -** | **$ -** |
| 9 | **Salaries and Benefits of Chambers Staff** | | | | |
| 10 | Law Clerk, Grade JSP-12/6 (3 law clerks per circuit judgeship) | $ 94,245 | - | $ - | $ - |
| 11 | Secretary, Grade JSP-11/8 (1 secretary per circuit judgeship) | $ 83,129 | - | $ - | $ - |
| 12 | Assistant Secretary, Grade JSP-10/8 (1 assistant secretary per circuit judgeshi | $ 75,666 | - | $ - | $ - |
| 13 | **SUBTOTAL, CHAMBERS STAFF SALARIES AND BENEFITS** | **$ 253,040** | **-** | **$ -** | **$ -** |
| 14 | **Salaries and Benefits of Court Support Staff** | | | | |
| 15 | Circuit Executive | $ 84,062 | 10 | $ 865,839 | $ - |
| 16 | Appellate Clerk | $ 59,768 | 20 | $ 1,183,404 | $ - |
| 17 | Staff Attorney | $ 98,496 | 7 | $ 679,620 | $ - |
| 18 | Conference Attorney | $ 53,296 | - | $ - | $ - |
| 19 | Circuit Librarian | $ 71,504 | 1 | $ 42,902 | $ - |
| 20 | BAP Clerk | $ 84,734 | 2 | $ 169,468 | $ - |
| 21 | Severance Pay or Relocation for Decreasing New Ninth AWUs (421.6 to 301.4 | $ 25,500 | 120 | $ - | $ 3,065,100 |
| 22 | **SUBTOTAL, COURT SUPPORT STAFF SALARIES AND BENEFITS** | **$ 477,359** | **-** | **$ 2,941,233** | **$ 3,065,100** |
| 23 | **Operation and Maintenance Expenses** | | | | |
| 24 | Travel, Judge and Chambers Staff (Per Judgeship) | $ 45,558 | - | $ - | $ - |
| 25 | Printing of opinions (Per Judgeship) | $ 10,710 | - | $ - | $ - |
| 26 | Transcripts (Per Judgeship) | $ 113 | - | $ - | $ - |
| 27 | Chambers Lawbook Collection (Start-up) (Per Judgeship) | $ 24,123 | - | $ - | $ - |
| 28 | Chambers Lawbook Collection (Recurring cost) (Per Judgeship) | $ 13,673 | - | $ - | $ - |
| 29 | Circuit Library (Start-up) (Includes $250K books, $190K furniture/shelving) | $ 448,800 | 1 | | $ 448,800 |
| 30 | Circuit Library (Recurring) | $ 147,900 | 1 | $ 147,900 | |
| 31 | Furniture and furnishings - Judges and Chambers (Per Judgeship) | $ 46,920 | - | $ - | $ - |
| 32 | Furniture and furnishings - Court Support Staff (use total 12th staff) | $ 4,080 | 160 | $ - | $ 651,984 |
| 33 | Copiers (1:9, total 12th staff, new judges, new chambers) | $ 10,200 | 18 | $ - | $ 181,107 |
| 34 | Fax Machines (1:8, total 12th staff, new judges, new chambers) | $ 2,244 | 20 | $ - | $ 44,824 |
| 35 | Allotment Formulas (OA-DCN, Capital Goods, Alltmt Simp) | $ 5,856 | 40 | $ 231,890 | $ - |
| 36 | **SUBTOTAL, OPERATION AND MAINTENANCE EXPENSES** | **$ 760,177** | | **$ 379,790** | **$ 1,326,715** |
| 37 | **Information Technology and Telecommunications Expenses** | | | | |
| 38 | Judges and Chambers IT Equipment Allocation (computers, printers, etc.) | $ 26,928 | - | $ - | $ - |
| 39 | Court Support Staff IT Desktop Computers (use total 12th staff + 33%) | $ 5,100 | 213 | $ - | $ 1,083,923 |
| 40 | Court Support Staff IT Printers, Scanners, Plotters (use total 12th staff) | $ 2,189 | 51 | $ - | $ 111,924 |
| 41 | Computers Servers and Software (Start-up) (unit cost is average) | $ 14,875 | 48 | $ - | $ 714,000 |
| 42 | Computers Servers and Software (Recurring) (unit cost is average) | $ 1,387 | 46 | $ 63,803 | $ - |
| 43 | IT infrastructure, LAN, WAN, etc. (Start-up) (unit cost is average) | $ 9,024 | 34 | $ - | $ 306,816 |
| 44 | IT infrastructure, LAN, WAN, etc. (Recurring) (unit cost is average) | $ 16,677 | 4 | $ 66,708 | $ - |
| 45 | Telecomm.Voice/Data Cabling(total 12th staff, new judges,new chambers)+5% | $ 5,304 | 168 | $ - | $ 889,958 |
| 46 | **SUBTOTAL, INFORMATION TECHNOLOGY AND TELECOMM** | **$ 81,484** | | **$ 130,511** | **$ 3,106,621** |
| 47 | **Space and Facilities** | | | | |
| 48 | Space Alterations (Start-up) (unit cost is average of space buildout/modific.) | $ - | - | | $ 3,455,129 |
| 49 | New Courthouse Construction | $ - | - | $ - | $ - |
| 50 | Rent (Recurring) | $ - | - | $ 4,032,119 | $ - |
| 51 | Relocation (Start-up) | $ - | - | | $ 1,706,000 |
| 52 | **SUBTOTAL, SPACE AND FACILITIES** | **$ -** | **-** | **$ 4,032,119** | **$ 5,161,129** |
| 53 | **Court Security (Courtroom and Chambers)** | | | | |
| 54 | Court Security Officer (Recurring) (Per Judgeship) | $ 68,818 | - | $ - | $ - |
| 55 | Equipment (Start-up) (Per Judgeship | $ 25,307 | - | $ - | $ - |
| 56 | Equipment (Recurring) (Per Judgeship) | $ 434 | - | $ - | $ - |
| 57 | **SUBTOTAL, COURT SECURITY** | **$ 94,559** | | **$ -** | **$ -** |
| 58 | | | | | |
| 59 | **COST SUMMARY** | | | CIRCUIT | CIRCUIT |
| 60 | **HR 4093** | | | ANNUAL RECURRING | START-UP |
| 61 | Judges and Chambers Staff Compensation | | | $ - | $ - |
| 62 | Court Support Staff Compensation | | | $ 2,941,233 | $ 3,065,100 |
| 63 | Operating Expenses | | | $ 379,790 | $ 1,326,715 |
| 64 | Information Technology and Telecommunications | | | $ 130,511 | $ 3,106,621 |
| 65 | Space and Facilities | | | $ 4,032,119 | $ 5,161,129 |
| 66 | Court Security (Courtroom and Chambers) | | | $ - | $ - |
| 67 | **TOTAL INCREMENTAL COSTS** | | | **$ 7,483,654** | **$ 12,659,565** |

## INCREMENTAL COSTS ASSOCIATED WITH HR 4093 - HQ in SEATTLE

24-Oct-05

| | | | | | |
|---|---|---|---|---|---|
| 1 | **HR 4093** | | | **New Judgeships** | **7** |
| 2 | | | | **New Chambers Staff** | **35** |
| 3 | **(All salary information based on Projected January 2006 salary levels)** | | | **New Court Support Staff** | **40** |
| 4 | | | | **Total 12th Court Supp. Stf** | **160** |
| 5 | | | | **CIRCUIT** | **CIRCUIT** |
| 6 | | **Unit Cost** | **Quantity** | **ANNUAL RECURRING** | **START-UP** |
| 7 | **Salaries and Benefits of Circuit Judges ($175.1K Salary + 9.7% Benefits)** | $ 192,085 | 7 | $ 1,344,593 | $ - |
| 8 | **SUBTOTAL, JUDGES SALARIES AND BENEFITS** | **$ 192,085** | | **$ 1,344,593** | **$ -** |
| 9 | **Salaries and Benefits of Chambers Staff** | | | | |
| 10 | Law Clerk, Grade JSP-12/6 (3 law clerks per circuit judgeship) | $ 94,245 | 21 | $ 1,979,154 | $ - |
| 11 | Secretary, Grade JSP-11/8 (1 secretary per circuit judgeship) | $ 83,129 | 7 | $ 581,900 | $ - |
| 12 | Assistant Secretary, Grade JSP-10/8 (1 assistant secretary per circuit judgeshi | $ 75,666 | 7 | $ 529,660 | $ - |
| 13 | **SUBTOTAL, CHAMBERS STAFF SALARIES AND BENEFITS** | **$ 253,040** | **-** | **$ 3,090,713** | **$ -** |
| 14 | **Salaries and Benefits of Court Support Staff** | | | | |
| 15 | Circuit Executive | $ 84,062 | 10 | $ 865,839 | $ - |
| 16 | Appellate Clerk | $ 59,768 | 20 | $ 1,183,404 | $ - |
| 17 | Staff Attorney | $ 98,496 | 7 | $ 679,620 | $ - |
| 18 | Conference Attorney | $ 53,296 | - | $ - | $ - |
| 19 | Circuit Librarian | $ 71,504 | 1 | $ 42,902 | $ - |
| 20 | BAP Clerk | $ 84,734 | 2 | $ 169,468 | $ - |
| 21 | Severance Pay or Relocation for Decreasing New Ninth AWUs (421.6 to 301.4 | $ 25,500 | 120 | $ - | $ 3,065,100 |
| 22 | **SUBTOTAL, COURT SUPPORT STAFF SALARIES AND BENEFITS** | **$ 477,359** | **-** | **$ 2,941,233** | **$ 3,065,100** |
| 23 | **Operation and Maintenance Expenses** | | | | |
| 24 | Travel, Judge and Chambers Staff (Per Judgeship) | $ 45,558 | 7 | $ 318,908 | $ - |
| 25 | Printing of opinions (Per Judgeship) | $ 10,710 | 7 | $ 74,970 | $ - |
| 26 | Transcripts (Per Judgeship) | $ 113 | 7 | $ 793 | $ - |
| 27 | Chambers Lawbook Collection (Start-up) (Per Judgeship) | $ 24,123 | 7 | $ - | $ 168,861 |
| 28 | Chambers Lawbook Collection (Recurring cost) (Per Judgeship) | $ 13,673 | 7 | $ 95,712 | $ - |
| 29 | Circuit Library (Start-up) (Includes $250K books, $190K furniture/shelving) | $ 448,800 | 1 | | $ 448,800 |
| 30 | Circuit Library (Recurring) | $ 147,900 | 1 | $ 147,900 | |
| 31 | Furniture and furnishings - Judges and Chambers (Per Judgeship) | $ 46,920 | 7 | $ - | $ 328,440 |
| 32 | Furniture and furnishings - Court Support Staff (use total 12th staff) | $ 4,080 | 160 | $ - | $ 651,984 |
| 33 | Copiers (1:9, total 12th staff, new judges, new chambers) | $ 10,200 | 22 | $ - | $ 228,707 |
| 34 | Fax Machines (1:8, total 12th staff, new judges, new chambers) | $ 2,244 | 25 | $ - | $ 56,605 |
| 35 | Allotment Formulas (OA-DCN, Capital Goods, Alltmt Simp) | $ 5,856 | 82 | $ 477,835 | $ - |
| 36 | **SUBTOTAL, OPERATION AND MAINTENANCE EXPENSES** | **$ 760,177** | | **$ 1,116,117** | **$ 1,883,397** |
| 37 | **Information Technology and Telecommunications Expenses** | | | | |
| 38 | Judges and Chambers IT Equipment Allocation (computers, printers, etc.) | $ 26,928 | 7 | $ - | $ 188,496 |
| 39 | Court Support Staff IT Desktop Computers (use total 12th staff + 33%) | $ 5,100 | 213 | $ - | $ 1,083,923 |
| 40 | Court Support Staff IT Printers, Scanners, Plotters (use total 12th staff) | $ 2,189 | 51 | $ - | $ 111,924 |
| 41 | Computers Servers and Software (Start-up) (unit cost is average) | $ 14,875 | 48 | $ - | $ 714,000 |
| 42 | Computers Servers and Software (Recurring) (unit cost is average) | $ 1,387 | 46 | $ 63,803 | $ - |
| 43 | IT infrastructure, LAN, WAN, etc. (Start-up) (unit cost is average) | $ 9,024 | 34 | $ - | $ 306,816 |
| 44 | IT infrastructure, LAN, WAN, etc. (Recurring) (unit cost is average) | $ 16,677 | 4 | $ 66,708 | $ - |
| 45 | Telecomm, Voice/Data Cabling (total 12th staff, new judges, new chambers)+3 | $ 5,304 | 212 | $ - | $ 1,123,865 |
| 46 | **SUBTOTAL, INFORMATION TECHNOLOGY AND TELECOMM** | **$ 81,484** | | **$ 130,511** | **$ 3,529,024** |
| 47 | **Space and Facilities** | | | | |
| 48 | Space Alterations (Start-up) (unit cost is average of space buildout/modific.) | $ - | - | | $ 3,455,129 |
| 49 | New Courthouse Construction | $ - | - | $ - | $ - |
| 50 | Rent (Recurring) | $ - | - | $ 4,032,119 | $ - |
| 51 | Relocation (Start-up) | $ - | - | | $ 1,706,000 |
| 52 | **SUBTOTAL, SPACE AND FACILITIES** | **$ -** | **-** | **$ 4,032,119** | **$ 5,161,129** |
| 53 | **Court Security (Courtroom and Chambers)** | | | | |
| 54 | Court Security Officer (Recurring) (Per Judgeship) | $ 68,818 | 7 | $ 481,729 | $ - |
| 55 | Equipment (Start-up) (Per Judgeship | $ 25,307 | 7 | $ - | $ 177,151 |
| 56 | Equipment (Recurring) (Per Judgeship) | $ 434 | 7 | $ 3,035 | $ - |
| 57 | **SUBTOTAL, COURT SECURITY** | **$ 94,559** | | **$ 484,763** | **$ 177,151** |
| 58 | | | | | |
| 59 | **COST SUMMARY** | | | **CIRCUIT** | **CIRCUIT** |
| 60 | **HR 4093 + 7 Circuit Judgeships** | | | **ANNUAL RECURRING** | **START-UP** |
| 61 | Judges and Chambers Staff Compensation | | | $ 4,435,306 | $ - |
| 62 | Court Support Staff Compensation | | | $ 2,941,233 | $ 3,065,100 |
| 63 | Operating Expenses | | | $ 1,116,117 | $ 1,883,397 |
| 64 | Information Technology and Telecommunications | | | $ 130,511 | $ 3,529,024 |
| 65 | Space and Facilities | | | $ 4,032,119 | $ 5,161,129 |
| 66 | Court Security (Courtroom and Chambers) | | | $ 484,763 | $ 177,151 |
| 67 | **TOTAL INCREMENTAL COSTS** | | | **$ 13,140,050** | **$ 13,815,800** |

## INCREMENTAL COSTS ASSOCIATED WITH S 1845 / HR 4093 - HQ in PHOENIX

24-Oct-05

| | | | | | |
|---|---|---|---|---|---|
| 1 | **S 1845 / HR 4093** | | | ~~New Judgeships~~ | - |
| 2 | | | | ~~New Chambers Staff~~ | - |
| 3 | **(All salary information based on Projected January 2006 salary levels)** | | | New Court Support Staff | 40 |
| 4 | | | | Total 12th Court Supp. Stf | 160 |
| 5 | | | | CIRCUIT | CIRCUIT |
| 6 | | Unit Cost | Quantity | ANNUAL RECURRING | START-UP |
| 7 | **Salaries and Benefits of Circuit Judges ($175.1K Salary + 9.7% Benefits)** | $ 192,085 | - | $ - | $ - |
| 8 | **SUBTOTAL, JUDGES SALARIES AND BENEFITS** | **$ 192,085** | | **$ -** | **$ -** |
| 9 | **Salaries and Benefits of Chambers Staff** | | | | |
| 10 | Law Clerk, Grade JSP-12/6 (3 law clerks per circuit judgeship) | $ 94,245 | - | $ - | $ - |
| 11 | Secretary, Grade JSP-11/8 (1 secretary per circuit judgeship) | $ 83,129 | - | $ - | $ - |
| 12 | Assistant Secretary, Grade JSP-10/8 (1 assistant secretary per circuit judgeshi | $ 75,666 | - | $ - | $ - |
| 13 | **SUBTOTAL, CHAMBERS STAFF SALARIES AND BENEFITS** | **$ 253,040** | **-** | **$ -** | **$ -** |
| 14 | **Salaries and Benefits of Court Support Staff** | | | | |
| 15 | Circuit Executive | $ 84,062 | 10 | $ 865,839 | $ - |
| 16 | Appellate Clerk | $ 59,768 | 20 | $ 1,183,404 | $ - |
| 17 | Staff Attorney | $ 98,496 | 7 | $ 679,620 | $ - |
| 18 | Conference Attorney | $ 53,296 | - | $ - | $ - |
| 19 | Circuit Librarian | $ 71,504 | 1 | $ 42,902 | $ - |
| 20 | BAP Clerk | $ 84,734 | 2 | $ 169,468 | $ - |
| 21 | Severance Pay or Relocation for Decreasing New Ninth AWUs (421.6 to 301.4 | $ 25,500 | 120 | $ - | $ 3,065,100 |
| 22 | **SUBTOTAL, COURT SUPPORT STAFF SALARIES AND BENEFITS** | **$ 477,359** | **-** | **$ 2,941,233** | **$ 3,065,100** |
| 23 | **Operation and Maintenance Expenses** | | | | |
| 24 | Travel, Judge and Chambers Staff (Per Judgeship) | $ 45,558 | - | $ - | $ - |
| 25 | Printing of opinions (Per Judgeship) | $ 10,710 | - | $ - | $ - |
| 26 | Transcripts (Per Judgeship) | $ 113 | - | $ - | $ - |
| 27 | Chambers Lawbook Collection (Start-up) (Per Judgeship) | $ 24,123 | - | $ - | $ - |
| 28 | Chambers Lawbook Collection (Recurring cost) (Per Judgeship) | $ 13,673 | - | $ - | $ - |
| 29 | Circuit Library (Start-up) (Includes $250K books, $190K furniture/shelving) | $ 448,800 | 1 | | $ 448,800 |
| 30 | Circuit Library (Recurring) | $ 147,900 | 1 | $ 147,900 | |
| 31 | Furniture and furnishings - Judges and Chambers (Per Judgeship) | $ 46,920 | - | $ - | $ - |
| 32 | Furniture and furnishings - Court Support Staff (use total 12th staff) | $ 4,080 | 160 | $ - | $ 651,984 |
| 33 | Copiers (1:9, total 12th staff, new judges, new chambers) | $ 10,200 | 18 | $ - | $ 181,107 |
| 34 | Fax Machines (1:8, total 12th staff, new judges, new chambers) | $ 2,244 | 20 | $ - | $ 44,824 |
| 35 | Allotment Formulas (OA-DCN, Capital Goods, Alltmt Simp) | $ 5,856 | 40 | $ 231,890 | $ - |
| 36 | **SUBTOTAL, OPERATION AND MAINTENANCE EXPENSES** | **$ 760,177** | | **$ 379,790** | **$ 1,326,715** |
| 37 | **Information Technology and Telecommunications Expenses** | | | | |
| 38 | Judges and Chambers IT Equipment Allocation (computers, printers, etc.) | $ 26,928 | - | $ - | $ - |
| 39 | Court Support Staff IT Desktop Computers (use total 12th staff + 33%) | $ 5,100 | 213 | $ - | $ 1,083,923 |
| 40 | Court Support Staff IT Printers, Scanners, Plotters (use total 12th staff) | $ 2,189 | 51 | $ - | $ 111,924 |
| 41 | Computers Servers and Software (Start-up) (unit cost is average) | $ 14,875 | 48 | $ - | $ 714,000 |
| 42 | Computers Servers and Software (Recurring) (unit cost is average) | $ 1,387 | 46 | $ 63,803 | $ - |
| 43 | IT infrastructure, LAN, WAN, etc. (Start-up) (unit cost is average) | $ 9,024 | 34 | $ - | $ 306,816 |
| 44 | IT infrastructure, LAN, WAN, etc. (Recurring) (unit cost is average) | $ 16,677 | 4 | $ 66,708 | $ - |
| 45 | Telecomm,Voice/Data Cabling(total 12th staff, new judges,new chambers)+59 | $ 5,304 | 168 | $ - | $ 889,958 |
| 46 | **SUBTOTAL, INFORMATION TECHNOLOGY AND TELECOMM** | **$ 81,484** | | **$ 130,511** | **$ 3,106,621** |
| 47 | **Space and Facilities** | | | | |
| 48 | Space Alterations (Start-up) (unit cost is average of space buildout/modific.) | $ - | - | | $ 1,100,000 |
| 49 | New Courthouse Construction | $ - | - | $ - | $ 84,394,500 |
| 50 | Rent (Recurring) | $ - | - | $ 6,806,250 | $ - |
| 51 | Relocation (Start-up) | $ - | - | | $ 1,706,000 |
| 52 | **SUBTOTAL, SPACE AND FACILITIES** | **$ -** | **-** | **$ 6,806,250** | **$ 87,200,500** |
| 53 | **Court Security (Courtroom and Chambers)** | | | | |
| 54 | Court Security Officer (Recurring) (Per Judgeship) | $ 68,818 | - | $ - | $ - |
| 55 | Equipment (Start-up) (Per Judgeship | $ 25,307 | - | $ - | $ - |
| 56 | Equipment (Recurring) (Per Judgeship) | $ 434 | - | $ - | $ - |
| 57 | **SUBTOTAL, COURT SECURITY** | **$ 94,559** | | **$ -** | **$ -** |
| 58 | | | | | |
| 59 | **COST SUMMARY** | | | CIRCUIT | CIRCUIT |
| 60 | **S 1845 / HR 4093** | | | ANNUAL RECURRING | START-UP |
| 61 | Judges and Chambers Staff Compensation | | | $ | $ |
| 62 | Court Support Staff Compensation | | | $ 2,941,233 | $ 3,065,100 |
| 63 | Operating Expenses | | | $ 379,790 | $ 1,326,715 |
| 64 | Information Technology and Telecommunications | | | $ 130,511 | $ 3,106,621 |
| 65 | Space and Facilities | | | $ 6,806,250 | $ 87,200,500 |
| 66 | Court Security (Courtroom and Chambers) | | | $ - | $ - |
| 67 | **TOTAL INCREMENTAL COSTS** | | | **$ 10,257,785** | **$ 94,698,936** |

**INCREMENTAL COSTS ASSOCIATED WITH S 1845 / HR 4093 - HQ in PHOENIX**

24-Oct-05

| | | | | | |
|---|---|---|---|---|---|
| 1 | **S 1845 / HR 4093** | | | **New Judgeships** | **7** |
| 2 | | | | **New Chambers Staff** | **35** |
| 3 | **(All salary information based on Projected January 2006 salary levels)** | | | **New Court Support Staff** | **40** |
| 4 | | | | **Total 12th Court Supp. Stf** | **160** |
| 5 | | | | **CIRCUIT** | **CIRCUIT** |
| 6 | | **Unit Cost** | **Quantity** | **ANNUAL RECURRING** | **START-UP** |
| 7 | **Salaries and Benefits of Circuit Judges ($175.1K Salary + 9.7% Benefits)** | $ 192,085 | 7 | $ 1,344,593 | $ - |
| 8 | **SUBTOTAL, JUDGES SALARIES AND BENEFITS** | **$ 192,085** | | **$ 1,344,593** | **$ -** |
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| 11 | Secretary, Grade JSP-11/8 (1 secretary per circuit judgeship) | $ 83,129 | 7 | $ 581,900 | $ - |
| 12 | Assistant Secretary, Grade JSP-10/8 (1 assistant secretary per circuit judgeshi | $ 75,666 | 7 | $ 529,660 | $ - |
| 13 | **SUBTOTAL, CHAMBERS STAFF SALARIES AND BENEFITS** | **$ 253,040** | **-** | **$ 3,090,713** | **$ -** |
| 14 | **Salaries and Benefits of Court Support Staff** | | | | |
| 15 | Circuit Executive | $ 84,062 | 10 | $ 865,839 | $ - |
| 16 | Appellate Clerk | $ 59,768 | 20 | $ 1,183,404 | $ - |
| 17 | Staff Attorney | $ 98,496 | 7 | $ 679,620 | $ - |
| 18 | Conference Attorney | $ 53,296 | - | $ - | $ - |
| 19 | Circuit Librarian | $ 71,504 | 1 | $ 42,902 | $ - |
| 20 | BAP Clerk | $ 84,734 | 2 | $ 169,468 | $ - |
| 21 | Severance Pay or Relocation for Decreasing New Ninth AWUs (421.6 to 301.4 | $ 25,500 | 120 | $ - | $ 3,065,100 |
| 22 | **SUBTOTAL, COURT SUPPORT STAFF SALARIES AND BENEFITS** | **$ 477,359** | **-** | **$ 2,941,233** | **$ 3,065,100** |
| 23 | **Operation and Maintenance Expenses** | | | | |
| 24 | Travel, Judge and Chambers Staff (Per Judgeship) | $ 45,558 | 7 | $ 318,908 | $ - |
| 25 | Printing of opinions (Per Judgeship) | $ 10,710 | 7 | $ 74,970 | $ - |
| 26 | Transcripts (Per Judgeship) | $ 113 | 7 | $ 793 | $ - |
| 27 | Chambers Lawbook Collection (Start-up) (Per Judgeship) | $ 24,123 | 7 | $ - | $ 168,861 |
| 28 | Chambers Lawbook Collection (Recurring cost) (Per Judgeship) | $ 13,673 | 7 | $ 95,712 | $ - |
| 29 | Circuit Library (Start-up) (Includes $250K books, $190K furniture/shelving) | $ 448,800 | 1 | | $ 448,800 |
| 30 | Circuit Library (Recurring) | $ 147,900 | 1 | $ 147,900 | |
| 31 | Furniture and furnishings - Judges and Chambers (Per Judgeship) | $ 46,920 | 7 | $ - | $ 328,440 |
| 32 | Furniture and furnishings - Court Support Staff (use total 12th staff) | $ 4,080 | 160 | $ - | $ 651,984 |
| 33 | Copiers (1:9, total 12th staff, new judges, new chambers) | $ 10,200 | 22 | $ - | $ 228,707 |
| 34 | Fax Machines (1:8, total 12th staff, new judges, new chambers) | $ 2,244 | 25 | $ - | $ 56,605 |
| 35 | Allotment Formulas (OA-DCN, Capital Goods, Alltmt Simp) | $ 5,856 | 82 | $ 477,835 | $ - |
| 36 | **SUBTOTAL, OPERATION AND MAINTENANCE EXPENSES** | **$ 760,177** | | **$ 1,116,117** | **$ 1,883,397** |
| 37 | **Information Technology and Telecommunications Expenses** | | | | |
| 38 | Judges and Chambers IT Equipment Allocation (computers, printers, etc.) | $ 26,928 | 7 | $ - | $ 188,496 |
| 39 | Court Support Staff IT Desktop Computers (use total 12th staff + 33%) | $ 5,100 | 213 | $ - | $ 1,083,923 |
| 40 | Court Support Staff IT Printers, Scanners, Plotters (use total 12th staff) | $ 2,189 | 51 | $ - | $ 111,924 |
| 41 | Computers Servers and Software (Start-up) (unit cost is average) | $ 14,875 | 48 | $ - | $ 714,000 |
| 42 | Computers Servers and Software (Recurring) (unit cost is average) | $ 1,387 | 46 | $ 63,803 | $ - |
| 43 | IT infrastructure, LAN, WAN, etc. (Start-up) (unit cost is average) | $ 9,024 | 34 | $ - | $ 306,816 |
| 44 | IT infrastructure, LAN, WAN, etc. (Recurring) (unit cost is average) | $ 16,677 | 4 | $ 66,708 | $ - |
| 45 | Telecomm, Voice/Data Cabling (total 12th staff, new judges, new chambers)+ | $ 5,304 | 212 | $ - | $ 1,123,865 |
| 46 | **SUBTOTAL, INFORMATION TECHNOLOGY AND TELECOMM** | **$ 81,484** | | **$ 130,511** | **$ 3,529,024** |
| 47 | **Space and Facilities** | | | | |
| 48 | Space Alterations (Start-up) (unit cost is average of space buildout/modific.) | $ - | - | | $ 1,100,000 |
| 49 | New Courthouse Construction | $ - | - | $ - | $ 84,394,500 |
| 50 | Rent (Recurring) | $ - | - | $ 6,806,250 | $ - |
| 51 | Relocation (Start-up) | $ - | - | | $ 1,706,000 |
| 52 | **SUBTOTAL, SPACE AND FACILITIES** | **$ -** | **-** | **$ 6,806,250** | **$ 87,200,500** |
| 53 | **Court Security (Courtroom and Chambers)** | | | | |
| 54 | Court Security Officer (Recurring) (Per Judgeship) | $ 68,818 | 7 | $ 481,729 | $ - |
| 55 | Equipment (Start-up) (Per Judgeship | $ 25,307 | 7 | $ - | $ 177,151 |
| 56 | Equipment (Recurring) (Per Judgeship) | $ 434 | 7 | $ 3,035 | $ - |
| 57 | **SUBTOTAL, COURT SECURITY** | **$ 94,559** | | **$ 484,763** | **$ 177,151** |
| 58 | | | | | |
| 59 | **COST SUMMARY** | | | **CIRCUIT** | **CIRCUIT** |
| 60 | **S 1845 / HR 4093 + 7 Circuit Judgeships** | | | **ANNUAL RECURRING** | **START-UP** |
| 61 | Judges and Chambers Staff Compensation | | | $ 4,435,306 | $ - |
| 62 | Court Support Staff Compensation | | | $ 2,941,233 | $ 3,065,100 |
| 63 | Operating Expenses | | | $ 1,116,117 | $ 1,883,397 |
| 64 | Information Technology and Telecommunications | | | $ 130,511 | $ 3,529,024 |
| 65 | Space and Facilities | | | $ 6,806,250 | $ 87,200,500 |
| 66 | Court Security (Courtroom and Chambers) | | | $ 484,763 | $ 177,151 |
| 67 | **TOTAL INCREMENTAL COSTS** | | | **$ 15,914,181** | **$ 95,855,171** |

WASHINGTON
LEGISLATIVE OFFICE

The Honorable Lamar Smith
Chair, Subcommittee on Courts, the
Internet, and Intellectual Property
Committee on the Judiciary
B-352 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Howard L. Berman
Ranking Member, Subcommittee on
Courts, the Internet, and Intellectual Property
Committee on the Judiciary
B-352 Rayburn House Office Building
Washington, D.C. 20515

October 24, 2005

**AMERICAN CIVIL LIBERTIES UNION**
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW
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T/202.544.1681
F/202.546.0738
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**OFFICERS AND DIRECTORS**
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*PRESIDENT*

ANTHONY D. ROMERO
*EXECUTIVE DIRECTOR*

KENNETH B. CLARK
CHAIR, NATIONAL
*ADVISORY COUNCIL*

RICHARD ZACKS
*TREASURER*

Re: Oppose Bills to Split the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Smith and Representative Berman:

The American Civil Liberties Union urges you to oppose H.R. 4093, which would split the United States Court of Appeals for the Ninth Circuit into two new circuits. The new Ninth Circuit would consist of California, Hawaii, Guam, and the Northern Mariana Islands. The new Twelfth Circuit would have the remaining states from the present Ninth Circuit, namely, Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

The ACLU opposes any legislative proposal that disciplines federal judges other than removal by impeachment. Protecting the judiciary from legislative pressure is fundamental to maintaining an independent judiciary. In fact, the Constitution even prohibits Congress from reducing salaries for judges during their service. Redistricting the courts of appeals in response to disfavored judicial decisions is at least as threatening to separation of powers as a salary reduction.

Congress may revise the judicial map to account for population shifts or to balance judicial caseloads, but the proposed split of the more than century-old Ninth Circuit appears to be driven primarily by an interest in affecting the decisions of the new proposed appellate court by cordoning off those judges whose decisions some senators do not like. In fact, the legislation is so results oriented that it even ignores the historical practice of creating diversity within circuits by including at least three states. Enactment of any of these bills would send a message to judges that Congress seeks oversight over judicial decisions.

When Congress last seriously considered splitting the Ninth Circuit, in 1997, it instead set up a commission to consult with judges and practitioners in the affected states to develop a plan for promoting judicial economy and improving access to justice. The resulting commission recommended against splitting the Ninth Circuit. However, the commission also recommended numerous administrative reforms, which the Ninth Circuit is now implementing. The ACLU urges you to allow the Ninth Circuit to complete its changes and have them be tested by experience before reopening the possibility of splitting the circuit.

Thank you for your attention to this matter. Please do not hesitate to call us at 202-675-2308 if you need any additional information.

Sincerely,

Caroline Fredrickson
Director

Christopher E. Anders
Legislative Counsel

**MEMORANDUM TO THE MEMBERS OF THE SENATE AND HOUSE JUDICIARY COMMITTEES**

We, the undersigned, are the judges of the United States Court of Appeals for the Ninth Circuit who have served as Chief Judge, or stand in line to serve as Chief Judge in the foreseeable future. Over past decades we have all had the opportunity to testify before Congress opposing various proposals to divide the Ninth Circuit. We urge the members of the Judiciary Committees to refrain from taking any action on any proposal relating to this subject until the committees are fully informed, and hearings held, to address all of the possible ramifications of such action for our Court, our Circuit and our nation's federal court system.

Respectfully submitted,

James R. Browning

Alfred T. Goodwin

J. Clifford Wallace

Procter Hug

Mary M. Schroeder

Alex Kozinski

September 2005 Sidney R. Thomas

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

95 SEVENTH STREET, SUITE 205
SAN FRANCISCO, CALIFORNIA 94103-1526

CHAMBERS OF
CARLOS TEOFILO BEA
U.S. CIRCUIT JUDGE

TEL: 415.556.3000
FAX: 415.556.3001
Judge_Bea@ca9.uscourts.gov

October 21, 2005

Chairman, Judiciary Subcommittee on
Administrative Oversight and the Courts
Hart Senate Office Building
Washington. D.C. 20510

Re: Proposed Ninth Circuit Split Bill.

My dear Senator Sessions,

I am writing on behalf of recent (2000 and later) appointees to the U.S Court of Appeals for the Ninth Circuit, in opposition to the proposed Bills to split our Circuit. I have been authorized by Judges Rawlinson, Clifton and Callahan to write you on their behalf.

Some of us took the Bench with some trepidation that the size of the Circuit and the volume of cases would result in inefficiencies; that the number of judges would result in lack of collegiality. Others had no such skepticism.

Regardless our views before joining the Ninth Circuit, all of us have been impressed with the efficiency with which the court dispatches its business and our procedures for maintaining a uniform federal jurisprudence in our Circuit.

Additionally, whether we were appointed by Democratic or Republican presidents, our experience is that the number of judges, the varied panels and the several locations in which we sit enhances rather than diminishes the enthusiasm and collegiality we have encountered.

It is all too easy to look at the Ninth Circuit's size and case load from the outside and summarily conclude changes are needed. But take it from some recent arrivals who are on the inside its administrative efficiency is second to none.

Thank you for your consideration of our views. If you have any further questions, don't hesitate to ask them of us.

Very truly yours,

Carlos Tiburcio Bea
U.S. Circuit Judge

WSBA
BOARD OF GOVERNORS

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October 12, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
2449 Rayburn HOB
Washington, D.C. 20515-4905

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
2426 Rayburn HOB
Washington, D.C. 20515-2214

The Honorable Lamar S. Smith
Chair, Subcomm on Courts, the Internet
and Intellectual Property
United States House of Representatives
2231 Rayburn HOB
Washington, D.C. 20515-4321

The Honorable Howard L. Berman
Ranking Member, Subcomm. on Courts,
the Internet and Intellectual Property
United States House of Representatives
2221 Rayburn HOB
Washington, D.C. 20515

The Honorable Maria Cantwell
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patty Murray
United States Senate
173 Russell Senate Office Building 2
Washington, D.C. 20510

RE: Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2005 (H.R.211 and 212) – OPPOSE

Dear Chairman Sensenbrenner, Chairman Smith, Ranking Members Conyers and Berman, and Washington Senators Cantwell and Murray:

The Washington State Bar Association strongly opposes both H.R.211 and 212, the latest in a series of proposals to split the Ninth Circuit. We believe there is no legitimate reason to split this jurisdiction, and certainly no reason to incur the very substantial costs that such a split will generate. We further believe that our democratic process demands formal hearings on this important matter.

Chairman F. James Sensenbrenner, Jr.
Chairman Lamar S. Smith
Ranking Member John Conyers, Jr.
Ranking Member Howard L. Berman
Senator Maria Cantwell
Senator Patty Murray
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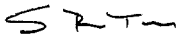
The WSBA debated the issues of size, regional differences among the states in the current Ninth Circuit, judicial collegiality, and necessary consistency in rulings. The Board of Governors of our organization unanimously concluded that splitting the Ninth Circuit Court of Appeals would not serve the interests of justice or the citizens of the state of Washington.

We found the arguments that the split would diffuse case law and work against inter-regional commerce case law were compelling. There is no legitimate reason to duplicate administration costs, when caseloads are currently being handled as well as in smaller circuits.

The Washington State Bar Association urges you to oppose both H.R. 211 and 212.

Sincerely,



S. Brooke Taylor
WSBA President

*Working Together to Champion Justice*

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